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CLERK'S COPY.

See also case No. 260.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL.,
PETITIONERS,

vs.

A. D. RYAN, S. D. BENNETT AND J. HOWARD
MARSHALL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE [illegible], 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

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[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity No. 635

and

Consolidated Causes Nos. 636 and 640

PANAMA REFINING COMPANY ET AL., Plaintiffs,

vs.

A. D. RYAN ET AL., Defendants

AMENDED BILL OF COMPLAINT—Filed Oct. 23, 1933

Comes now Panama Refining Company, a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its home office in Kilgore, Gregg County, Texas, and A. F. Anding, a citizen of the United States and of Gregg County, Texas, hereinafter referred to as plaintiffs, and complaining of A. D. Ryan, an agent of the Department of the Interior of the United States, who is residing in Smith County, Texas, J. Howard Marshall, Assist- [fol. 3] ant to the Attorney General of the United States, who is also temporarily residing in Smith County, Texas, and S. D. Bennett, United States District Attorney for the Eastern District of Texas and a resident of Beaumont, Texas. That the Panama Refining Company and the said A. F. Anding have joined as plaintiffs in this suit for the reason that they have a mutual interest in the relief prayed for by each of them, in this, that they each pray for injunctive relief, restraining the defendant, A. D. Ryan, his agents, servants, and employees from further enforcing against them and each of them the rules and regulations of Harold L. Ickes, Secretary of the Department of the Interior of the United States, promulgated under Section 9c of the National Industrial Recovery Act, and also to restrain the said A. D. Ryan, his agents, servants and employees from further coming upon their respective properties and gauging their tanks and digging up their pipe lines and otherwise wrongfully interfering with them in their respective business and occupations, and also to restrain the defendants, J. Howard Marshall, and S. D. Bennett, from bringing criminal proceedings against them and each of them because of their failure to comply with said rules and regulations being enforced by the said A. D. Ryan.

I

The Panama Refining Company, for cause of complaint, would show to the court that it is the owner and operator of a crude oil refining plant at Kilgore, Texas; that it does not own any oil and gas leases or oil wells, and does not produce any oil, but purchases all of its crude oil requirements from various and sundry crude oil producers whose oil is produced in Gregg and Rusk Counties, Texas, or from those who have purchased said oil from oil producers in [fol. 4] Gregg and Rusk Counties, Texas, and only after said oil has been produced. Therefore, the plaintiff, Panama Refining Company, has nothing whatsoever to do with the production of crude oil within the State of Texas, and the rules and regulations of the Railroad Commission of Texas promulgated under the oil and gas conservation statutes known as Title 102, R.C.S. of 1925 and the amendments thereto are not applicable to this plaintiff's business. That all oil purchased by this plaintiff is not only produced within the State of Texas, but is also situated within the State of Texas at the time same is purchased by this plaintiff, and same is manufactured into gasoline, kerosene, gas oil, and other products in the plaintiff's refining plant at Kilgore, Texas, and wholly within the State of Texas; that after said crude oil is manufactured into gasoline and other products, such products are sold to dealers within the State of Texas and those outside of the State of Texas. That this plaintiff is not engaged in interstate commerce in any manner whatsoever, except as to that proportion of the refined products of crude oil that it manufactures in its refining plant at Kilgore, Texas that it sells and transports into other states.

II

Plaintiff alleges that by Section 9c, Title 1 of the National Industrial Recovery Act passed by the 73rd Congress (Public No. 67), it is provided as follows:

> "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder, by any board, commission, of- [fol. 5] fice, or other duly authorized agency of the State. Any violation of any order of the President issued under this subsection shall be punishable by a fine of not to exceed $1000.00 or imprisonment for not to exceed six months, or both."

That after the enactment of said National Recovery Act by Congress, as aforesaid, and on July 11, 1933, the President issued a proclamation prohibiting the transportation in interstate and foreign commerce of any petroleum or the products thereof produced in violation of any state law or valid rule or regulation of any board, agency, etc. of the state promulgated thereunder, and designated Harold L. Ickes, Secretary of the Interior, as the agent of the President to promulgate rules and regulations for the carrying into effect of said Section 9c of said statute; and, thereafter, and on July 15, 1933 and July 25, 1933, and August 2, 1933, the said Harold L. Ickes, Secretary of the Interior, promulgated rules and regulations for the carrying into effect of said section of said act, copies of all of which are attached hereto marked Exhibit "A" and made a part hereof for reference thereto.

III

Plaintiff alleges that said Section 9c of the act of Congress, as aforesaid, is void and of no force and effect for the reason that the same is an attempt upon the part of Congress to delegate to the President legislative power, that is, to authorize the President at his discretion to prohibit the movement in interstate and foreign commerce of the commodities referred to therein, which is in contravention of Section I, Article I of the Constitution of the United States; that said section is further void for the reason that it is not within the power of Congress to [fol. 6] prohibit the movement in interstate and foreign commerce of ordinary commercial commodities, harmless in themselves, because of the manner of their production, the manner of such production being wholly within the jurisdiction of the state and local authorities. That if said section 9c of said act were valid and the President had the right and authority thereunder to prohibit the movement in interstate and foreign commerce of the commodities referred to therein, nevertheless, the rules and regulations of the said Harold L. Ickes promulgated thereunder, and especially Paragraph 5 thereof which requires the plaintiff to file a statement under oath every thirty days, or more often if the said Harold L. Ickes shall direct, setting forth the information called for therein, and also Paragraph 7 of said regulations, requiring the plaintiff to keep accurate books and records of all transactions involving the production and transportation of petroleum and the products thereof open for inspection of the agents of the Department of the Interior, are void and of no force and effect for the reason that the power and authority sought to be exercised and enforced by said regulations are not within the jurisdiction of the Federal government, as the matters and things sought to be regulated by said regulations are not interstate and foreign commerce as contemplated by the commerce clause of the Constitution of the United States, therefore, said regulations 5 and 7 are in excess of any power and authority on the part of the President or his appointee, Harold L. Ickes, and are therefore void.

IV

Plaintiff alleges that notwithstanding the invalidity of said regulations 5 and 7 of the said Harold L. Ickes, as aforesaid, the defendant, A. D. Ryan, who was in charge of a large body of men operating in the East Texas oil field [fol. 7] for the purpose of enforcing said rules and regulations of Harold L. Ickes, is enforcing the same against this plaintiff and demanding of it that it file with the Bureau of Investigation of the Department of the Interior daily reports covering the matters set forth in Paragraph 5 of said regulations, and that it also keep open, for his and his agents' inspection and examination, books and records showing the amount of oil that it purchases, from whom purchased, and the disposition thereof, and is threatening the plaintiff that if it fails to comply with said regulations, he will cause criminal prosecutions to be issued against its officers and agents for the infliction of fines and imprisonment against it for failure to comply with said regulations, and, in fact, since the filing of the plaintiffs' original petition herein, the said A. D. Ryan has caused the defendants, J. Howard Marshall and S. D. Bennett, to issue a complaint against the officers of this plaintiff and have them arrested because of having failed to comply with said rules and regulations, and said defendant, A. D. Ryan, has threatened plaintiff that he will continue to have them arrested and charged with the violation of said regulations if they continued to fail to comply with said regulations, and plaintiff fears that if they are not restrained, that they will continue to file complaints and arrest the officers and agents of the plaintiff for their failure to comply with said regulations, all of which is depriving them of their liberty without due process of law and in contravention of the Fifth Amendment to the Constitution of the United States.

V

Plaintiff further alleges that the said defendant, A. D. Ryan, has, by force and over the objection of the plaintiff and its officers and agents, from time to time come upon [fol. 8] the property of the plaintiff and gauged its tanks and inspected its pipe lines and other equipment, all for the purpose of attempting to find some evidence of the plaintiff's violation of the rules and regulations of the said Harold L. Ickes or violation of the rules and regulations of the Railroad Commission of Texas, and that they have demanded the books and records of the plaintiff for their examination and inspection, all of which is an infringement upon the right of the plaintiff, and in violation of the Fourth amendment to the Constitution of the United States, and unless the defendant, Ryan, and his representatives are restrained, plaintiff fears that they will continue to come upon its property and gauge its tanks and inspect its books and records in an attempt to find some evidence upon which to base a criminal complaint against the plaintiff.

VI

The plaintiff, A. F. Anding, for cause of complaint against the above named defendants, here re-adopts all of the allegations made by the plaintiff, Panama Refining Company, and, in addition thereto, would show to the court that he is the owner of two certain oil and gas leases, upon each of which there has been drilled an oil well, which are situated in the East Texas oil field, one of which is upon a five acre tract of land upon the Sanders tract, Mary Van Winkle Survey, Gregg County, Texas, and the other being located in Rusk County, Texas. That the defendants are likewise enforcing against him the rules and regulations of Harold L. Ickes attached hereto, and particularly Paragraphs 4 and 7 of said regulations; that this plaintiff is merely producing oil within the State of Texas and does not transport any oil outside of the State of Texas, and, by reason thereof, he is not in any wise engaged in interstate commerce; that said Paragraphs 4 and 7 of said regulations are void and of no force and effect for the reason [fol. 9] that the matters sought to be regulated thereby are wholly within the jurisdiction of the State of Texas and the local authorities and over which the Federal Government has no jurisdiction whatsoever; but, notwithstanding their invalidity, defendant, A. D. Ryan, has demanded that he comply with the same and file with the Department of the Interior the reports called for by said Paragraph 4 and that he also keep open, for the inspection of him and his agents, books and records showing the amount of his production and his disposition thereof, and said defendant has threatened this plaintiff that if he fails to comply with said regulations, he will cause the defendants, J. Howard Marshall and S. D. Bennett, to institute criminal proceedings against him for such violations of said rules and regulations, and, in fact, since the filing of this petition in this court, the said defendant, A. D. Ryan, has caused the said J. Howard Marshall and S. D. Bennett to file a complaint against him and have him arrested, charging him with a criminal offense against the laws of the United States because he has failed to comply with said regulations; and said defendant, Ryan, has threatened this plaintiff that he will continue to have him subjected to criminal prosecutions if he further fails to comply with said regulations, and the plaintiff fears that he will cause the said J. Howard Marshall and S. D. Bennett to institute further criminal proceedings against him and subject him to criminal prosecutions for the failure to comply with said rules and regulations, all of which has deprived and will continue to deprive the plaintiff of his liberty without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

VII

This plaintiff further alleges that in addition to the requirement and demand that he comply with said rules and [fol. 10] regulations, the said A. D. Ryan and his agents and representatives have come upon the oil lease of the plaintiff, above referred to, by force and over the objection of the plaintiff, and have dug up the plaintiff's pipe lines and severed and destroyed the same, all in an attempt to obtain some evidence against this plaintiff upon which to predicate a criminal charge against the plaintiff, all of which is in violation of the Fourth Amendment to the Constitution of the United States, and the plaintiff fears that if said defendants are not restrained from further coming upon his property that they will continue from time to time to come upon his property, dig up his pipe lines, and gauge his tanks in an attempt to obtain evidence against the plaintiff and in violation of his constitutional guarantee, as aforesaid.

VIII

Plaintiffs join in alleging that even though said Section 9c of said National Industrial Recovery Act is valid, and even though the rules and regulations of the said Harold L. Ickes, complained of herein, were valid, nevertheless, the defendants have no right or authority to enforce the same against these plaintiffs, for the reason that said Section 9c and all rules and regulations promulgated thereunder become operative in Texas only in the event oil is being produced in excess of a state law or valid rule and regulation by any commission, board, or other state agency; that there is no state law prohibiting or restricting the amount of oil that may be produced from any oil well within the State of Texas; that the Railroad Commission of Texas is the only commission or board or agency authorized by law to make any rules or regulations with reference to the production of oil within the State of Texas; that there is no valid rule or regulation of the Railroad Commission of Texas restricting the production of oil in Texas, in this, that before the Railroad Commission of Texas can make a valid rule or regula- [fol. 11] tion restricting the amount of oil that may be produced from any oil well in Texas, it must, at a hearing called for that purpose, and after ten days notice, find from the evidence heard at said hearing that it is necessary in order to prevent waste that the production of oil be restricted to the amount so found by the Commission. That the orders and regulations of the Railroad Commission promulgated on September 5th, 1933, as amended on September 30th, 1933 and as further amended on October 18th, 1933, copies of which are attached hereto and marked Exhibits "B", "C", and "D", were not promulgated within the purview of the conservation laws of the State of Texas, being known as Title 102, R. C. S. of 1925 and the amendments thereto, that is, after notice and hearing of evidence as to the necessity of said orders, but said orders were promulgated and put in force and effect and are now being enforced by the Railroad Commission because of instructions given to the members of the Railroad Commission by Harold L. Ickes, who styles himself as Administrator of the Petroleum Code promulgated by the President under the provisions of the National Industrial Recovery Act, in which he advised the members of the Railroad Commission how much oil could be produced in Texas, all of which is apparent from the face of said orders of the Railroad Commission. That since said orders of the Railroad Commission are not the result of the deliberation and finding from evidence heard by the Commission as to the necessity of said orders to prevent waste as provided by the Statutes of Texas, they are void and of no force and effect, as said orders are in excess of any power or authority of the members of the Railroad Commission. That since the orders of the Railroad Commission are invalid, Section 9c and all orders of the National Industrial Recovery Act and all rules and regulations promulgated thereunder do not apply to the plaintiffs, and the further enforcement of said act of [fol. 12] Congress and the regulations and rules thereof against the plaintiffs, either as to intrastate or interstate business, is without authority of law and is depriving the plaintiffs of their property without due process of law and in contravention of the Fifth Amendment to the Constitution of the United States.

Wherefore, plaintiffs pray that the court immediately issue a temporary restraining order, restraining and enjoining the defendants from further coming upon the refining plant of the plaintiff, Panama Refining Company, or interfering with it in any manner in the operation of its refining business, and from further interfering with it in the purchase of oil and the refining of the same, or the disposition of said oil and the disposition of the refined products of the oil so refined; and that they be further restrained from coming upon the property of the plaintiff, A. F. Anding, or molesting him or his property in any manner whatsoever, or interfering with him in the operation of his oil wells; and that they be further restrained from further demanding of either of the plaintiffs reports called for in Paragraphs 4 and 5 of the regulations attached hereto; and that the defendants, A. D. Ryan, J. Howard Marshall, and S. D. Bennett, be restrained from instituting any criminal proceedings against these plaintiffs because of the violation of said Paragraphs 4 and 5 of said regulations of the Secretary of the Interior, and that upon the preliminary hearing hereof that an interlocutory injunction to the same effect be granted and that upon the final hearing hereof that said injunction be made permanent; that they recover their costs herein expended and have such other general relief to which they may be entitled under the facts proven.

F. W. Fischer, Tyler, Texas, Attorney for Plaintiffs.

[fol. 13] NOTE.—Exhibit "D" is not attached hereto for the reason that a copy of said order of the Railroad Commission of October 18th, 1933, is not yet obtainable by the public, and therefore reference to the original order on file in the office of the Railroad Commission at Austin, Texas, is here made.

Duly sworn to by A. F. Anding. Jurat omitted in printing.

EXHIBIT "A" TO AMENDED BILL OF COMPLAINT

United States Department of the Interior, Office of the Secretary, Washington

The following general rules and regulations are prescribed in conformity with the requirements of the Act of [fol. 14] Congress of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73rd Congress), and the orders of July 11 and July 14 of the President of the United States issued pursuant to such legislation.

Regulations

I

Under the terms of the aforesaid act and orders petroleum or the products thereof is in interstate and foreign commerce (1) when petroleum or any of the products thereof is in the course of shipment or transportation by rail, pipe line, water, truck, or any other means of conveyance from any State, Territory, or District of the United States to any other State, Territory or District of the United States, or to a foreign country, or (2) when petroleum or any of the products thereof is in any quantity or in any manner commingled with petroleum or the products thereof some part of which is in the course of such shipment or transportation, regardless of how such commingling occurs during the various processes of shipment or refining. Excess production of petroleum or the products thereof under said act and orders includes petroleum produced in excess of proration quotas, oil-gas ratio requirements or any other purported conservation measure which tends to limit, directly or indirectly, the production of petroleum or the products thereof.

II

Any producer, operator, lessee, royalty owner, or other person, natural or artificial, having an interest in any petroleum producing property, or possessing any right, title or interest in petroleum or the products thereof, who shall ship, transport, or deliver to another for shipment or trans- [fol. 15] portation or shall acquiesce in the procuring or conspire with any other persons, natural or artificial, to procure the transportation in interstate or foreign commerce of any petroleum or the products thereof; or any person, natural or artificial, who shall receive for shipment or transportation in interstate and foreign commerce, or shall purchase for shipment in interstate and foreign commerce any petroleum or the products thereof, with the knowledge that such petroleum was produced or withdrawn from storage in violation of any law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of a State, shall be deemed to have violated the provisions of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations thereunder, and shall be subject to the penalties prescribed in the Act. And each transaction shall be deemed a separate offense.

III

Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon intrastate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases and shipments are in interstate and foreign commerce or in intrastate commerce.

[fol. 16]

IV

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post-office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.

(3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees

or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law, or valid regulation or order prescribed there- [fol. 17] under by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. As amended by Order of July 25, 1933.

V

Every purchaser of petroleum shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner, or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or [fol. 18] disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced. As amended by Order of July 25, 1933.

VI

No transporting agency whether by rail, pipe line, water, motor vehicle, or any other means of conveyance shall receive for transportation any petroleum or the porducts thereof unless the respective shippers and producers hereinafter described shall each furnish, and the transporting agency or agencies shall receive in good faith, and without reasonable grounds for believing that any fact stated is untrue, affidavits sworn to before any duly authorized State or Federal officer setting forth the information required by this regulation for the respective shippers or producers.

The following rules and classifications shall govern the furnishing of affidavits under this regulation:

Class "A" Shipments

Any shipment of petroleum, offered for shipment to any transporting agency, in the area where produced.

Class "A" shipments shall be supported by affidavits of both the shipper and the producer containing the following:

(a) The residence and post-office address of both the producer and the shipper.

(b) A declaration that none of the petroleum shipped has been produced or withdrawn from storage in excess of [fol. 19] the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) A recital of supporting facts, including the number of barrels included within the shipment, a designation of the properties producing the petroleum shipped, the time during which such petroleum was produced and the rate of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production, and wherever the State law or regulations thereunder limiting production apply to individual wells, then a designation of the wells from which such petroleum was produced, and a number of barrels contained in the shipment produced from each well, together with the daily production of each well during the period when such shipment was produced.

(d) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That if the petroleum offered for shipment was produced on or before July 11, 1933, and such petroleum has been acquired from any other shipper and/or producer and has been purchased or otherwise acquired from many sources and areas and has been so commingled that it is impossible for the shipper to furnish the facts required in subparagraph (c) above, the recital of facts required in such subparagraph (c) may be omitted and the following statement submitted in lieu thereof:

"(c1) The date and place of each transaction involving the acquisition of petroleum so commingled subsequent to [fol. 20] June 16, 1933; the name and business addresses of the producers and/or shippers from whom such petroleum was acquired and the amount of petroleum involved in each transaction.

"(c2) A statement setting forth the reasons why the information requested in subparagraph (c) above cannot be furnished."

Class "B" Shipments

Any shipment of the products of petroleum when such products are, after processing or refining, offered for shipment to any transporting agency, in the area where the petroleum, which has been processed or refined, was produced.

Class "B" shipments shall be supported by an affidavit of the shipper containing the following:

(a) The residence and post-office address of the shipper.

(b) A declaration that the shipper did not acquire such petroleum or the products thereof with the knowledge that such petroleum had been produced in violation of any State law, or rule or regulation or aid or abet any other person in so producing the same, and that to the best of his information and belief the products of petroleum shipped have not been derived from petroleum produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) Such other information as may be required from time to time by the Division of Investigation of the Depart- [fol. 21] ment of the Interior for the proper enforcement of these orders and regulations.

Class "C" Shipments

Shipments of petroleum or the products thereof, when such shipments are made from a point outside the area where the petroleum was produced.

Class "C" shipments need not be supported by affidavit. Provided, however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may transport any petroleum without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same; provided, further, That with respect to the products of petroleum any carrier or carriers may receive from other carriers for such transportation such products if the affidavit required for Class "B" shipments is furnished to the originating carrier and due endorsement of its receipt is stamped upon the shipping papers.

Provided further, That the provisions of this regulation shall not apply to shipments of the products of petroleum by rail in less than carload lots.

Provided further, That where shipments of petroleum or the products thereof are offered for shipment in intrastate commerce and are subsequently in any manner diverted into interstate commerce, in whole or in part, the interstate carrier may not accept for shipment such petroleum or such products.

Provided further, That the term "area where produced" as used in this regulation, for the East Texas and Oklahoma City fields, respectively, shall include:

[fol. 22] 1. For the East Texas field, the counties of Upshur, Smith, Gregg, Cherokee, Rusk and Harrison in the State of Texas, and that portion of the State of Louisiana adjoining Harrison County which is included with the area described as follows: (including boundary points named): Beginning at a point on the Louisiana-Texas State line opposite the northeast corner of Harrison County, Texas, east to the Morringsport on the Kansas City Southern Ry.; thence southeast to Cash Point on The Texas and Pacific Ry.; thence east to Vanceville on the St. Louis Southwestern Ry. Co.; thence southeast to Adner on the Louisiana and Arkansas Ry Co.; thence south to Bodcau on the Illinois Central R. R.; thence southwest to Curtis on the Louisiana Arkansas and Texas Ry. Co.; thence southwest to Lucas on The Texas and Pacific Ry. Co.; thence west to Forbing on the Kansas City Southern Ry.; thence southwest to Keithville on the Southern Pacific Lines and The Texas and Pacific Ry. Co.; thence northwest to the southeastern corner of Harrison County at the Louisiana-Texas State line; and thence to the point of beginning.

2. For the Oklahoma City field, the area within a 15-mile radius of Oklahoma City, Oklahoma. As amended by Order of July 25 and August 2, 1933.

VII

All persons, natural or artificial, embraced within the terms of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulation issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

[fol. 23]

VIII

All reports required by these regulations shall be filed with the Division of Investigations of the Department of the Interior in Washington, D. C., or with such regional agencies as may be from time to time designated by the Division of Investigations.

IX

Each and every false declaration in any statement under oath required by these orders and regulations, or each and every failure to file reports or to keep and maintain adequate records, as required by these orders and regulations, and any participation by any officer or agent of a corporation in any acts of commission or omission in performing the duties described by these orders and regulations shall constitute a violation under the terms of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

X

These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, area, field, pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations may be by him at any time amended or changed in whole or in part.

XI

In order to carry out the purposes of said Executive orders of July 11, and July 14, 1933, and of these regulations, the word 'petroleum' when used in these regulations, [fol. 24] singly, and separate and apart from 'the products thereof' shall be understood to mean petroleum in its crude form; and the 'product or products of petroleum' or 'Petroleum product or products' shall be understood to mean such products of petroleum as are ordinarily shipped or transported by pipe line, tank car, tanker, tank trucks and gasoline, nap-tha, fuel oil, kerosene, distillates, road oil, gas oil, blended gasoline, refined oil, and lubricating oil.'' Added by Order of July 25, 1933.

XII

Such pipe lines and gathering systems as serve areas in which producers and/or shippers are required to furnish an affidavit or affidavits with the tender for shipment of petroleum shall file a statement under oath, sworn to before any duly authorized State ore Federal officer not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the pipe line or gathering system.

(2) The place and date of all receipts of petroleum, the names and business addresses of the producers and consignor (principals and agents) from whom petroleum was received, and the amount received of such petroleum from each producing property properly identified.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of consignees to whom delivered, [fol. 25] and the amount of petroleum held in storage or otherwise at the beginning and end of said calendar month. Added by Order of July 25, 1933.

XIII

When any affidavit and/or other sworn statement under oath is required by these regulations to be tendered or filed by any person such affidavit and/or statement must be tendered or filed by the real party in interest owning, producing, purchasing, shipping, refining or otherwise dealing with the petroleum or the products thereof involved in the transaction or transactions which are the subject of such affidavit or statement.

Provided however, That such affidavit or statement may be tendered or filed by a duly authorized agent of such real party in interest, when proof of such authorization has been filed with the Division of Investigations of the Department of the Interior on or before the date of the making or filing of said affidavit or statement. Added by Order of July 25, 1933.

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

1. Regulation VI is hereby suspended except in so far [fol. 26] as it affects shipments of petroleum or its products from the East Texas and Oklahoma City areas, as hereinafter defined, when such petroleum has been produced in whole or in part in such areas or such products have been derived in whole or in part from petroleum produced therein.

2. The affidavits required by Regulation VI shall be furnished in duplicate.

3. The first general proviso to Regulation VI is hereby amended to read as follows: (Note—The amendment has been incorporated in the Regulation, the full text of which appears at PP. 6716).

4. The last general proviso to Regulation VI is hereby amended to read as follows: (Note—the amendment has been incorporated in the Regulation, the full text of which appears at PP. 6716).

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

7. Regulation XII is hereby suspended except in so far as it affects pipe lines or gathering systems serving the East Texas and Oklahoma City areas.

This order shall not affect any shipment in interstate or foreign commerce of petroleum or the products thereof, produced or withdrawn from storage in violation of State law or valid regulation issued thereunder, and the penalties [fol. 27] prescribed by these regulations and the orders of July 11 and July 14, 1933, of the President of the United States issued pursuant to the authority vested in him by section 9(c) of the act of June 16, 1933, known as the "National Industrial Recovery Act", shall remain in full force and effect.

Approved and Promulgated this 2nd day of August, 1933.

Harold L. Ickes, Secretary of the Interior.

Exhibit "B" to Amended Bill of Complaint

Railroad Commission of Texas, Oil and Gas Division

Oil and Gas Dockets 108, 120, 123, 124, 125, 126, 128, 129 and 132

In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas

Austin, Texas,
September 5, 1933.

Emergency Order

Whereas, by decree of the Congress of the United States of America a national emergency has been declared to exist; and

Whereas, under the authority of the National Industrial Recovery Act a hearing was had in the City of Washington, D. C., and a code of fair competition for the petroleum industry was promulgated; and,

[fol. 28] Whereas, under date of August 19, 1933, the President of the United States, Franklin D. Roosevelt, approved the Code of Fair Competition for the Petroleum Industry; and,

Whereas, we have been advised by the Hon. Harold L. Ickes, Administrator of the Code, that the allowable production for the State of Texas, effective 7 a. m., September 8, 1933, will be 975,200 barrels daily; and,

Whereas, it is the desire of the Railroad Commission of Texas to cooperate fully with the President of the United States and the administrator of the Petroleum Code under the National Recovery Administration; and, Whereas, under the last regular order of the Railroad Commission of Texas the allowable production of Texas was set at a figure which is presently 1,216,000 barrels; and,

Whereas, under the laws of the State of Texas the Railroad Commission of Texas is required to give ten days notice of a hearing, and said notice has this day been given setting the hearing at the earliest possible moment, namely —9 a. m., September 16, 1933, at Austin, Texas, but, realizing that this date is eight days later than the date set by the National Administration, and wishing to fully cooperate with the National Administration;

We, therefore, hereby order that all fields and all wells in Texas except "marginal wells" as defined by the laws of Texas be reduced in daily allowable production by exactly 25%, which amount of reduction will bring the allowable production of the State of Texas within the figure set by the National Administrator as the amount of oil which [fol. 29] can be produced in Texas and allowed under the Code to go into the channels of interstate commerce.

It being the provisions of the Code that should such quotas allocated in conformity with the provisions of this Section not be made within the State or if the production of petroleum within the State exceed the allowance within such State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purpose of the National Industrial Recovery Act, and, since the Railroad Commission of Texas desires to make possible the smooth administration of the orders of the Administrator of the Code of Fair Competition for the Petroleum Industry, the Railroad Commission of Texas is making this temporary order to be effective until further orders which shall come after the date of said hearing which has been called for September 16, 1933, in conformity with the laws of the State of Texas. This order shall become effective at seven o'clock A. M., September 8, 1933.

Railroad Commission of Texas, by Lon A. Smith, Chairman; C. V. Terrell, Commissioner; Ernest O. Thompson, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 30] EXHIBIT "C" TO AMENDED BILL OF COMPLAINT

Railroad Commission of Texas, Oil and Gas Division

Oil and Gas Dockets 108, 120, 123, 124, 125, 126, 128, 129 and 132

In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas

Austin, Texas,
September 30, 1933.

Amended Temporary Emergency Order

Pursuant to hearings held according to notice in above cause, and evidence presented to this Commission, and to authority conferred by the conservation laws of the State of Texas:

It is hereby ordered that the Emergency Order of this Commission entered September 5, 1933, and effective at 7 o'clock A. M., September 8, 1933, be amended so as to bring to total production of crude oil of the State of Texas within the amount allotted to the State of Texas, namely—965,000 barrels, by the Administrator of the Code for the Petroleum Industry under the National Recovery Act so as to hereafter and until superseded read as follows:

"We, therefore, hereby order that all fields and all wells in Texas except 'marginal wells' as defined by the laws of Texas be reduced in daily allowable production as of September 7, 1933, by exactly 26% which amount of [fol. 31] reduction will bring the allowable production of the State of Texas within the figure set by the National Administrator as the amount of oil which can be produced in Texas and allowed under the Code to go into the channels of interstate commerce. Where there is no limit to production of crude oil set by order of the Commission the average daily production for the week ending August 26, 1933, shall be the basis upon which the 26% reduction shall be calculated. No exception to the foregoing will be granted under this order for any cause.

"It being the provisions of the Code that should such quotas allocated in conformity with the provisions of this

Section not be made within the State or if the production of petroleum within the State exceed the allowance within such State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purpose of the National Industrial Recovery Act, and, since the Railroad Commission of Texas desires to make possible the smooth administration of the orders of the Administrator of the Code of Fair Competition for the Petroleum Industry, the Railroad Commission of Texas is making this temporary order to be effective at seven a. m., October 1, 1933."

Railroad Commission of Texas, by Lon A. Smith, Chairman; C. V. Terrell, Commissioner; Ernest O. Thompson, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 32] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS TO AMENDED BILL OF COMPLAINT—Filed Nov. 6, 1933

Come now the defendants, A. D. Ryan, J. Howard Marshall and S. D. Bennett, and for their answer to the Amended Bill of Complaint state:

1. The Amended Bill of Complaint is fatally defective in that there is a misjoinder of parties plaintiff, as shown upon the face of the Bill;

2. The Amended Bill of Complaint is fatally defective in that there is a misjoinder of causes of action, as shown upon the face of said Bill;

3. The said Amended Bill of Complaint is fatally defective in that there is a misjoinder of parties defendant, as shown upon the face of said Amended Bill;

4. The said Amended Bill is fatally defective and should be dismissed so far as the same attempts to attack the validity of any order of the Railroad Commission of Texas for the reason that neither the State of Texas nor said

Railroad Commission is made a party defendant, all as shown upon the face of the Amended Bill, with particular reference to Paragraph VIII thereof, which paragraph should be dismissed;

5. The said Amended Bill fails to state the cause of [fol. 33] action against the defendants and should accordingly be dismissed for the following reasons: (a) The Act of Congress of June 16, 1933 (Public 67—73d Congress) is valid and constitutional; (b) The promulgation or Order of the President of July 11, 1933 is valid and constitutional; (c) The promulgation or Order of the President of July 14, 1933 delegating the President's powers under Section 9(c) of said Act to the Secretary of the Interior is valid and constitutional; (d) The Regulations of the Secretary of the Interior of July 15 and 25 and August 2, 1933 are valid and constitutional; (e) The orders of the Railroad Commission of the State of Texas limiting the production of oil within said State, including production by the individual plaintiff, are valid under the Constitution and Statutes of the State of Texas—all as shown upon the face of said Amended Bill of Complaint;

6. The said Amended Bill of Complaint is fatally defective so far as the same attempts to raise any question as to the validity of the orders of the Railroad Commission of Texas in that the State of Texas or the Railroad Commission of Texas are indispensable parties defendant.

Further answering, they admit the allegations of the first unnumbered paragraph of said Amended Bill of Complaint as to the residence of the parties, but they deny any alleged joint interest on the part of the plaintiffs, and they further deny all other allegations of fact set forth in said first unnumbered paragraph of the complaint.

I

They have no knowledge as to the allegations of paragraph I of the Amended Bill of Complaint as to the ownership and operation by plaintiff, Panama Refining Company, of a crude oil refining plant, its lack of ownership of oil [fol. 34] or gas leases or wells, and its production and purchase of oil, and they accordingly deny the same and call for strict proof thereof so far as said allegations are material; they deny each and every other allegations of said paragraph I of the Amended Bill of Complaint, except they admit that the Panama Refining Company sells gasoline and other products of petroleum to dealers, both within and outside of the State of Texas, and they aver that said company is accordingly engaged in interstate commerce in petroleum and the products thereof;

II

They admit the allegations of paragraph II of said Amended Bill of Complaint;

III

They deny each and every of the allegations of paragraph III of said Amended Bill of Complaint;

And further answering the allegations of said paragraph III of the said Amended Bill of Complaint, they aver that the oil field commonly known as the East Texas Oil Field located in the State of Texas in the Counties of Smith, Gregg and Rusk, in which field Kilgore, Texas, is located, and in which field the plaintiff company operates a refinery and the plaintiff individual owns an oil and gas producing well, is an oil field in which there are and were at the time of the filing of said Amended Complaint more than 11,000 producing oil wells and approximately fifty-seven refineries, which latter, including the refinery operated by the plaintiff company, obtain crude oil or petroleum from the wells of said field, and manufacture therefrom gasoline, kerosene and other products of petroleum; that the daily legal production of oil in said field, under the laws of the [fol. 35] State of Texas and the orders of the Railroad Commission of the State of Texas, is limited to the legal production of approximately 400,000 barrels per day; that for a period of many months last past the actual production of oil in said field has been largely in excess of said legally authorized production, such excess being produced in violation of the laws of the State of Texas and the orders of the Railroad Commission of the State of Texas made thereunder; that such excess production, known as "hot oil," that is, bootleg oil, has been for many months and is now sold greatly below the posted price in said field of legally produced oil, is run into refineries, sold and transported in intrastate and interstate commerce at prices greatly below the price of legally produced oil; and many refineries in said field refine products, including gasoline, from said illegally produced oil, and sell, dispose of and transport large quantities thereof at a price far below the posted price of said products in said field, without paying the State and Federal taxes therein, in intrastate and interstate commerce; that there are many owners and producers of oil in said field who comply with the laws of the State of Texas and the orders of said Railroad Commission, who pay the State and Federal taxes due, but who are unable to compete with the aforesaid illegal production of petroleum or with the sale of the refined products thereof; that the sale and production and transportation of said illegally produced oil and the products thereof affect the price of crude oil and its products both in the State of Texas and in the whole of the United States, particularly on the Atlantic and Pacific coasts and in the mid-continent area, and thus the production and refining of petroleum in the East Texas Oil Field directly affects interstate commerce in crude petroleum and its products; that the production and refining of petroleum in the East Texas Oil Field and the transpor- [fol. 36] tation thereof from said field into other States by rail, pipe line and water directly affects interstate commerce in petroleum and its products, in that, of the whole production of petroleum in the United States, more than one-third is derived from the East Texas Oil Field. The chief products of said petroleum are gasoline, kerosene and fuel oil of which millions of barrels are daily consumed throughout the United States, and the production and refining of the oil produced in said field has a controlling influence upon the price structure of crude oil and it products throughout the United States, directly involves the use of interstate transportation facilities throughout the United States, particularly in the mid-continent area and along the Gulf, Atlantic and Pacific coasts, including the facilities, pipe lines, railroads, motor vehicles and water; that large quantities of illegally produced oil in said East Texas Oil Field and the products derived therefrom have been and were at the time of the filing of the Amended Complaint and still are being produced and shipped from said East Texas Field by all methods of transportation, in interstate commerce, although said oil has been and is being produced in violation of the laws of the State of Texas and, though illegally produced, such oil and products have been for a long period of time and are now being sold at cut-rate prices in competition with petroleum and the products thereof produced and refined in accordance with the laws of the State of Texas and of the United States;

Further answering said paragraph of said Amended Bill, defendants aver that by reason of the fact that the East Texas Oil Field produces such a large proportion of the total crude oil production of the United States, from which gasoline and other products are manufactured and sold throughout the United States, and by reason of the further fact that approximately 82 per cent of all oil produced in [fol. 37] said field enters the stream of interstate commerce, the regulation of interstate commerce of oil and its products necessitates the requirement of information and inspection as to the production of crude oil, the refining thereof and the shipment thereof in and from the said East Texas Oil Field, in which the plaintiffs allege they respectively own a refinery engaged in interstate commerce and producing wells;

Further answering said paragraph, defendants aver that the regulations complained of are reasonable, desirable and necessary to administer and enforce Section 9(c) of the National Industrial Recovery Act of June 16, 1933, and the President's orders issued thereunder referred to in the Amended Complaint;

IV

They admit the allegations of fact set forth in paragraph IV of said Amended Complaint, but they deny that by reason of said facts the plaintiffs are being deprived of or have been deprived of their liberty without due process of law or in contravention of the Fifth Amendment of the Constitution of the United States.

V

They deny that the defendant, A. D. Ryan, has by force and over the objection of the plaintiff company and its officers and agents form time to time come upon the property of the plaintiff and gauged its tanks and inspected its pipe lines and other equipment, and on the contrary they aver that they have never gone upon the property of said plaintiff over objection and gauged tanks or inspected pipe lines or equipment; they admit that they have requested the books and records of the plaintiffs for information and inspection, but they deny that any of these matters [fol. 38] are an infringement on the rights of the plaintiffs or in violation of the Fourth Amendment of the Constitution of the United States; and further answering said paragraph, they state that the defendant, Ryan, claims a right, under the regulations of the Secretary of the Interior complained of, to gauge plaintiff's tanks and inspect its books and records, not, however, in an attempt to obtain evidence upon which to base criminal complaint against plaintiff, but as a proper, reasonable, desirable and necessary procedure in connection with the prohibition of shipment in interstate commerce of petroleum or its products produced or withdrawn from storage in violation of the laws of the State of Texas and order made thereunder;

VI

Answering the allegations of paragraph VI of said Amended Bill of Complaint, the defendants admit that the plaintiff, Anding, is merely producing oil within the State of Texas, but they deny that he does not transport any oil outside of said State, and in this connection the defendants further aver that even though said particular individual, Anding, limited his operations to production within the State of Texas and did not transport oil outside of said State, nevertheless the regulations complained of are reasonable, proper, desirable and necessary in connection with the prohibition from shipment in interstate commerce of petroleum or its products produced or withdrawn from storage in violation of State law or order by reason of the matters and things hereinabove, in paragraph III set forth, and for the further reason that a reasonable method of enforcing said Section 9(c) of the Act of June 16, 1933, and the President's said orders issued thereunder, is by obtaining the information required from producers and refiners by the regulations complained of, and that this in- [fol. 39] formation, in order to be of assistance in enforcing said Section 9(c) of said Act, must necessarily be obtained from all producers and refiners in the East Texas Oil Field so that the sources of illegally produced oil and its products may be ascertained.

VII

They deny each and every allegation of paragraph VII of said Amended Complaint, except that they admit that they exposed on the property alleged to belong to the plaintiffs what is known as a "by-pass," but they did not destroy or sever the same; that said "by-pass" had been installed by the plaintiff, Anding, so that oil could be run through it without being gauged as required by the State of Texas, and so that said oil could be run in a hidden and secret manner, so that taxes could be evaded and so that oil could be produced and transported therethrough in excess of the lawful production allowed the plaintiff under the laws and orders of the State of Texas; and they deny that the exposure of said "by-pass" violated any constitutional right of the said plaintiff under the Fourth Amendment of the Constitution of the United States.

VIII

Answering the allegations of paragraph VIII of said Amended Complaint, the defendants deny each and every allegation of fact therein set forth, and in this connection they aver that even were it true, which the defendants deny, that the orders of the Railroad Commission of Texas promulgated September 5 and September 30, 1933, and October 18, 1933, were invalid, such conclusion would be immaterial for the reason that Title 102, R. C. S. of 1925 and the amendments thereto, being statutes of the State of Texas, [fol. 40] authorizes the Railroad Commission of the State of Texas to fix the allowable production of crude oil in the State of Texas, and prior to said orders of September 5 and 30, and October 18, there had been duly and legally promulgated by said Railroad Commission valid orders to that end, which would still be in effect notwithstanding such invalidity of the orders of said Commission of September 5 and 30, and October 18, or any of them, and the enforcement of said Section 9(c) of said Act of June 16, 1933, made and still does make it necessary and desirable to put into effect and to keep in operation the regulations complained of; and further answering said paragraph, these defendants aver that the authority of the Railroad Commission of the State of Texas under the laws of said State to fix the allowable production of crude oil in said State is now in existence and has been since 1925, and the Railroad Commission of said State, in pursuance of said statute, has constantly and continuously, from time to time, duly made and promulgated orders fixing the allowable production of crude oil in said State, and has had for many years and now has a large field force aiding in the regulation and enforcement of such orders under the authority of said State with widespread, carefully prepared and competently maintained personnel and equipment, actively engaged for many years, and now so engaged, in endeavoring to secure compliance by producers and others engaged in the oil industry with the orders of said Commission from time to time made and promulgated; that the validity of the Federal regulations now complained of and the validity of all actions of the defendants thereunder and under statutes of the United States now complained of, depend in no manner upon the validty of the particular orders of September 5 and 30, and of October 18, 1933, referred to in said paragraph VIII of the Amended Complaint, said regulations not being in any sense limited in their application [fol. 41] by orders of the Railroad Commission last above referred to, but being general in application for the purpose of prohibiting the transportation in interstate and foreign commerce of petroleum and its products produced or withdrawn from storage in violation of any law or order of the State of Texas or any agency thereof; that even if said orders of the Railroad Commission of Texas of September 5 and 30, and October 18, 1933, were for any reason invalid, which the defendants deny, there would nevertheless be in full force and effect in said State valid orders of said Commission theretofore made and promulgated limiting as to each well in said State the daily allowable production of crude oil thereform, and there would remain in effect the statutes of the State authorizing the Railroad Commission of Texas to exercise constantly and continuously the function of control of production of oil in said State; that said Commission has constantly exercised said function for a long period of time; that the statute authorizing it so to do is valid and in effect; that said Commission and the State of Texas is now and has been for a long period of time engaged in the enforcement of orders promulgated under said statute; that the promulgation of such orders is the duty of said Commission which it must continue to perform;

And further answering said paragraph VIII of said Amended Complaint, the defendants state that said orders of the Railroad Commission of the State of Texas, promulgated September 5 and 30, and October 18, 1933, must be taken as valid in this suit for the reason that the same may not be collaterally attacked or indirectly attacked in a court of the United States in a suit to which members of the said Railroad Commission are not parties or to which the State of Texas is not a party, and in which it is sought to enjoin only the enforcement of regulations issued under the [fol. 42] authority of the United States and ont of the State of Texas.

And further answering said paragraph VIII of the Amended Complaint, these defendants state that the validity of said last referred to orders of the Railroad Commission of Texas may not be determined in this suit for the reason that such determination is not a Federal question or one alleged in the Amended Complaint upon any ground giving rise to Federal jurisdiction, and the question of the validity of said orders of said Commission is a matter which may be determined only by the courts of the State of Texas in the absence of attack upon said orders upon any Federal ground;

Further answering paragraph VIII of said amended Bill of Complaint, the defendants deny that any of the orders of the Railroad Commission of the State of Texas promulgated September 5 and 30, and October 18, 1933, are invalid for any reason, and they deny that any one of said orders was made without due and proper hearing or in an arbitrary or capricious manner, or without evidence; and in this connection they aver that the said orders, as appears upon the face of the copies of the order attached as Exhibits to the Complaint, were made after consideration of such evidence and hearing as was deemed necessary by said Commission, and that such evidence and hearing was, as shown upon the face of said orders, sufficient under the statutes of the State of Texas;

And further answering said paragraph VIII, these defendants state that the plaintiffs are not entitled to complain in this cause of any of said orders, or to attack the validity thereof, for the reason that the complaint fails to allege, and the fact is, that the plaintiffs have not exhausted their remedies for review of the edicts of said orders granted to the plaintiffs under the statutes of the State of [fol. 43] Texas, which statutes give the plaintiffs the right, if dissatisfied with any of said orders, to petition in a court of competent jurisdiction in Travis County, Texas, and thus obtain a speedy determination of the matter, as provided in Sec. 6 of Ch. 313 of the Acts of 1929, 41st Leg. of the State of Texas;

And further answering said paragraph VIII, the defendants state that there are no facts set forth therein or in the Amended Bill showing in what respect, or that in any manner the plaintiffs have been deprived of any right, or have been injured in any manner by either of the said orders of the Railroad Commission of the State of Texas;

Further answering the Amended Bill of Comp*any*, the defendants state that under the provisions of said Act of June 16, 1933 there was duly adopted and approved by the President, to wit, August 19, 1933 a Code of Fair Competition for the Petroleum Industry, and thereafter, to wit, September 13, 1933 there were adopted and approved by the President, under the provision of said Act, certain Modifications to said Code, under the provisions of which Code and Modifications the Federal agency therein referred to was authorized to estimate the market or consumers' demand in the United States of Petroleum and to allocate said demand among the several oil producing states; that under the provisions of said Act, Code, and Modifications the Department of the Interior was, to wit, the 27th day of August, 1933, duly, legally designated by the President as the Federal agency so to do, and the Secretary of the Interior was on the same day designated the Administrator of said Code and Modifications; that thereafter and from time to time the said Federal agency has estimated said market or consumers' demand and has allocated same among the oil producing states, including [fol. 44] the State of Texas, and has certified the same to the Governor and Railroad Commission of Texas; that under the Constitution and Statutes of the State of Texas the Railroad Commission of Texas has duly and legally after hearing and in compliance with the Statutes of Texas and in order to prevent waste, fixed the market demand of oil produced in the State of Texas in conformity with the allocation to Texas made by said Federal agency and certified as aforesaid, and has fixed the allowable production in the East Texas Oil Field allocated to said field, including all the wells thereon, the allowable production of said field and wells, which is greatly less than the potential production thereof; and the order of said Commission bearing date of September 30, 1933, copy of which is attached to the said Amended Bill as Exhibit "C" is one of said orders of said Railroad Commission of Texas; and prior to the adoption of said Code of Fair Competition and prior to any estimation of market or consumers' demand and certifications thereof made by the Department of the Interior, and on, to wit, the 13th day of June, 1933 and, to wit, the 22d day of April, 1933, the said Railroad Commission of Texas, in full compliance with the laws of the State of Texas, made and issued valid orders of the allowable production of said East Texas Oil Field and the wells therein, under the Constitution and laws of said State; and since said dates and now there has been and are vast quantities of petroleum and products thereof stored in said East Texas Oil Field, which petroleum was produced in violation of said orders; and since said subsequent orders of the Railroad Commission of Texas and the acts of the said Federal agency as aforesaid there have been and are tremendous quantities of petroleum and the products thereof stored in the East Texas Oil Field, which petroleum was produced in violation of said orders of the Railroad Commission of Texas.

[fol. 45] Further answering said Amended Complaint, defendants state that paragraphs IV, V and VII of the regulations, being the only part of said regulations of which the plaintiffs complain, are reasonable, desirable and necessary in order that the Act of Congress and said order of the President may be made effective; that they do no more than require the furnishing of certain information desirable, advisable or necessary in the proper and orderly enforcement of the Act of Congress and the President's order thereunder, and they are accordingly valid, and a proper exercise of the power to make rules and regulations granted by the Act of Congress;

And in this connection they aver that the information called for by said Regulation IV, applicable to a producer, is information necessarily within the knowledge of the producer and is only such information as is reasonably calculated to aid in preventing the transportation of illegally produced crude oil and the products thereof; that the information called for by said Regulation V, applicable to a refiner, is only such information as is necessarily within the knowledge of said refiner and is the information desirable, advisable and necessary to bring about the enforcement of said Act and President's order and is such information as is within the knowledge of the refiner, which he is capable of furnishing and which is necessary to be furnished in order that the Government may enforce its said statute and the President's order thereunder; that the regulations have been fitted largely to the bookkeeping systems of the refiners affected, the reports may be easily made, are being made regularly by a large number of refiners, and the Government representatives are cooperating with the refiners in a courteous manner in furnishing information and collecting the reports so as not to burden such refiners;

[fol. 46] That in the East Texas Field here involved local refineries are often tied directly to wells; that in order to check production it is accordingly necessary to check purchases by refineries; that refineries have been and now are the chief instrumentalities for the disposition of illegally produced oil, making it necessary in order to cure the evil to which the law is directed that reports be required of refineries; that refineries in the field are an adjunct of loading racks from which enormous amounts of oil are shipped; that the East Texas Field is of great territorial extent, with innumerable refineries in close proximity to producing wells, with innumerable by-passes and intricate systems of pipe lines, with facile means of railroad and truck movements of crude oil and refined products, and the necessity of reports from refineries is further shown by the impossibility by checking pipe lines and producers, due to the innumerable pipe lines of unknown character and ownership and by the impossibility of checking the ownership of many producing properties, with rapid changes of name and transfers of title, innumerable temporary incorporations, the switching of title back and forth and into quickly formed corporations, all of which is a part of a gigantic evasion of State and Federal law; that the obtaining of reports from refineries is a definite and certain source of information necessary to enforce the law; that enormous quantities of illegally produced oil and the products thereof have been for a long period of time run through refineries in said field, in violation of State law, and tremendous quantities of this oil and its products have beeen constantly entering the stream of interstate commerce through refineries;

That the East Texas Oil Field has a potential production of many millions of barrels of crude oil per day; that now and for a long time past hundreds of thousands of barrels of crude oil and the products thereof produced in [fol. 47] the East Texas Oil Field have been shipped in the interstate and foreign commerce; that hundreds of thousands of barrels per day of this production and refining have been and now are produced in violation of the orders of the State Railroad Commission of the State of Texas and the laws of the State of Texas, and since the 11th day of July, 1933, and up to the present time likewise in violation of said Act of Congress of June 16, 1933; that this production and refining is followed by the shipment in interstate and foreign commerce of such oil and its products, and this has had and does now have the effect of demoralizing the whole petroleum industry of the United States, representing an investment of more than twelve billions of dollars, by shipment of such oil and the products thereof in interstate commerce and the sale thereof without payment of State or Federal taxes, at below reasonable recovery and marketing cost, and with underselling by unfair competition petroleum and its products produced, shipped and sold in conformity to State and Federal law, upon which taxes have been paid; that the only reasonable means of enforcing the State and Federal laws prohibiting production and shipment in violation of State and Federal law is through the obtaining of information, as to the source of the production and as to the refining thereof, from producers and refiners as sought by the regulations complained of; and that this is further necessary and desirable so that the law-abiding producers and refiners and shippers may obtain a market in interstate commerce for their products at a fair and reasonable price free from the competition of illegally produced oil and its products;

That the crude oil of the United States and particularly of the East Texas Oil Field is a natural resource which enters daily into and affects interstate commerce through [fol. 48] the mid-continent marketing area by rail, pipe line and water transport, mingled in large part with the crude and refined products of other States and fields; that the prevention of waste of this natural resource and the proper regulation of interstate commerce therein makes mandatory the regulation of production and the shipment of refined products thereof and this can not successfully be accomplished except through the obtaining of information such as is required by Regulations IV, V and VII complained of.

Further answering, the defendants aver that the complaint is fatally defective in that, as shown upon the face of the Amended Complaint, the Secretary of the Interior is an indispensable party defendant;

Further answering, the defendants allege that in the State of Oklahoma and in the State of New Mexico there have been enacted and are now in force State statutes limiting the production and withdrawal from storage of petroleum: that said States border on the State of Texas; that from and into said States pass transportation facilities which also pass through the East Texas Oil Field, through and by means of which petroleum and petroleum products are constantly being transported from and to New Mexico and Oklahoma, commingled with and/or shipped or transported simultaneously with and by means of the same facilities as petroleum and/or petroleum products originating in Texas; that large quantities thereof go into interstate commerce; that in orderr to aid in effectuating the purpose and intent of the act of Congress of June 16, 1933, it is necessary and desirable to have the regulations complained of to avoid easy evasion and frustration of said act and by such evasion and frustration of the act of Congress to nullify the same; and this is true whether or not the said orders of the Railroad Commission of Texas are valid;

[fol. 49] Further answering the complaint, these defendants allege that there is now in full force and effect under the statutes of the State of Texas, duly authorized thereunder, a valid order or valid orders promulgated by the Railroad Commisison of said State, fixing the allowable production of crude petroleum within said State from the wells therein located, including more than 11,000 producing wells in the East Texas Oil Field; that said order or orders have never been held invalid in a court of competent jurisdiction, are now in full force and effect, and are being administered by said Railroad Commission of the State of Texas under the statutes of said State, including the orders of said Commission dated June 13, 1933, September 5 and 30, 1933, and October 18, 1933; that is, one or all of said orders; that production in said State and in said East Texas Oil Field exceeds the amount limited under any of said orders, and such excess production and the products thereof move in large part in interstate commerce, that 82 per cent of all the production in said East Texas Oil Field, and the products thereof, moves from said Field into interstate commerce, and that this condition has existed for more than six months last past, and exists at the present time.

Wherefore, the defendants pray that the rule be discharged, the application for injunction denied, the Amended Bill of Complaint be dismissed, and that the defendants may be hence dismissed with their costs.

J. Howard Marshall II, A. D. Ryan, S. D. Bennett, by Charles Fahy, Defendants. Charles Fahy, J. Howard Marshall II, Attorneys for Defendants, Washington, D. C.

[fol. 50] *Duly sworn to by A. D. Ryan. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO ISSUES, ETC.—Filed March 17, 1934

It is hereby stipulated and agreed by and between the attorneys for all of the parties in the above entitled action as follows:

[fol. 51] (1) That the issues tried and determined in said above styled and numbered causes were those fixed by the Amended Bill of Complaint filed by the complainants, Panama Refining Company, and A. F. Anding on October 23, 1933, and the answer of defendants, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, to the Amended Bill of Complaint filed November 6, 1933.

(2) That all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed, as described in Paragraph (1) above, and that all evidence introduced by the defendants with reference to any of the complainants should be considered with like force and effect as though introduced with reference to all of them.

In witness whereof, the attorneys of record have hereunto signed their names this the 15th day of March, A. D., 1934.

F. W. Fischer, Attorneys for Complainants. Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 52] IN UNITED STATES DISTRICT COURT EOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity No. 635

and

Consolidated Causes Nos. 636 and 640

PANAMA REFINING COMPANY ET AL., Plaintiffs,

vs.

A. D. RYAN ET AL., Defendants

Statement of Evidence—Filed April 2, 1934

Be it remembered that the above-entitled cause came on regularly for trial before the above Court sitting in Equity on the 6th day of November, 1933, upon the issues formed by the Amended Bill of Complaint and the Amended Answer thereto Mr. F. W. Fischer appearing as counsel for plaintiffs and Mr. Charles Fahy appearing as counsel for defendants.

Offers in Evidence

Plaintiffs introduced in evidence certified copies of Orders of the Railroad Commission of Texas dated September 5, 1933, September 30, 1933, and October 27, 1933, which, so far as is material to this cause, limited the daily production of crude petroleum from wells in the East Texas Field to fixed percentages of their average hourly potential producing capacity as determined by the Commission. The most recent of these orders limited daily production to 5.75 per cent of such hourly potential.

Plaintiffs introduced in evidence a statement by Tom Potter, who stated that he is Vice-President of the Panama [fol. 53] Refining Company, one of the plaintiffs in this case; that a few days before the filing of this suit, agents of the Department of the Interior, who informed him that they were working under the direction of A. D. Ryan, came upon the property of the Panama Refining Company and stated that they desired to gauge the tanks on the property and examine the same; that he stated to said agents that he would not consent for them to gauge the tanks and come upon the property; that they replied they had been sent out by Mr. Ryan to gauge the tanks and were going to gauge them regardless of whether he protested or not; that in order to avoid personal difficulty with these agents, he made no further resistance and these agents did go upon the tanks and property of the Panama Refining Company and gauged the tanks and inspected the property; that they stated to him they had instructions from Mr. Ryan to gauge these tanks and to examine the refining property as often as they saw fit. He further stated that thereafter, they came back upon the property during the night-time and gauged the tanks of the Refining Company and they demanded of him as the officer in charge of the Refining Company that he file reports as required by Paragraph V of the Regulations of the Department of the Interior, and that, at the time of these demands, they informed him that, if the reports were not furnished, criminal proceedings would be instituted against him.

Plaintiffs introduced in evidence a statement by A. F. Anding, who stated that he is one of the plaintiffs named in this cause and is the owner of oil wells referred to in the [fol. 54] Bill of Complaint; that he is President of the Panama Refining Company, another plaintiff in this case; that on September 4, 1933, agents and representatives of the defendant, A. D. Ryan, came upon an oil well owned by him and located on the Ira Birdwell land, in the R. W. Smith Survey, Rusk County, without his consent or authority and dug up the pipe lines, known as the flow lines, from this well to his tanks, and over his protest and by force cut said line with a blow torch; that these agents, whose names are unknown to him, then and there informed him to report immediately to the defendant, A. D. Ryan; that in compliance with these instructions, he did report to A. D. Ryan who admitted that he had sent these agents and representatives upon the property for the purpose of inspecting and examining the same, and that he had the right and authority under the Rules and Regulations of the Secretary of the Interior to go upon the property and examine it and dig up the pipe lines thereon and disconnect the same if, in his opinion, such pipe lines constituted what is known as by-passes; that Mr. A. D. Ryan stated that under the Rules and Regulations of the Secretary of the Interior he had the right and authority as the representative and agent of the Secretary of the Interior to come upon the property and examine the same and dig up the pipe lines and gauge the tanks as often as he saw fit, in order to prevent the production of oil in excess of the Railroad Commission's order. He further stated that a few days prior to the filing of this suit, the agents and representatives of the defendant, A. D. Ryan, whose names he did not know, but who showed credentials as agents of the Department of the Interior and who said they were working under the instructions of the defendant, A. D. Ryan, came upon the premises of the Panama Refining Company for the purpose of gauging the tanks of the Refining Company; that these agents were informed [fol. 55] by Tom Potter, Vice-President of the Panama Refining Company and who was in charge of the property, that the officers of the Panama Refining Company would not consent to the gauging of the Refining Company's tanks; that these agents informed Mr. Tom Potter that regardless of whether he consented to such gauging or not they intended to gauge said tanks; that in order to avoid personal conflict with said agents their entrance upon the property was not resisted; and that these agents did gauge the tanks of the Refining Company and subject the property to their examination and inspection.

Plaintiffs introduced in evidence copies of letters signed by Archie D. Ryan, which are in words and figures as follows, to-wit:

"United States Department of the Interior, Division of Investigations

Tyler, Texas, August 14, 1933.

Panama Refining Company, Kilgore, Texas.

GENTLEMEN: On August 27th, 1933, I mailed to you Questionnaire requesting that certain information be furnished me under authority vested in me by Executive Orders of the President of the United States on July 11 and July 14, 1933, under Section 9-C of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

I am in receipt of this Questionnaire marked 'Panama Refining Company is covered by Federal Injunctions' [fol. 56] Signed 'Panama Refining Company, By Tom Potter, President'. I wish to call your attention to the fact that the information requested by me is for the Division of Investigations, Department of the Interior, the power of the Government empowered by the Secretary to carry out Section 9-C of the National Industrial Recovery Act, and whatever Federal Injunctions that you might have against the Railroad Commission of Texas have no effect against the enforcement of the orders of the Secretary of the Interior in enforcing Section 9-C of the National Industrial Recovery Act.

I am returning a new Questionnaire to you and demand that the information requested therein be furnished me within five days after the receipt thereof, and I wish to call your attention to Section 9-C printed on the back of the Questionnaire giving the penalties for not complying with that Section of the Act.

Your immediate attention to this matter is requested.

Yours very truly, (Signed) Archie D. Ryan, Special Agent in Charge."

"United States Department of the Interior, Division of Investigations

Tyler, Texas, October 23, 1933.

Ortiz Oil Company, Joinerville, Texas.

Gentlemen: This office is in receipt of your E-B report for the month of September, 1933 (marked 'October'), filed [fol. 57] with this office under Regulation IV of The Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 73 barrels. Immediately advise this office in affidavit form your reason for permitting this overproduction to occur.

Your very truly, (Signed) Archie D. Ryan, Special Agent in Charge."

Plaintiffs introduced in evidence a statement by J. W. Smith, who stated that on or about the first day of September, 1933, he was employed by the Bureau of Investigations of the Department of the Interior to investigate; that he remained in its employ for several days, resigning from said position about September 15th; that during this time he was working out of the office of A. D. Ryan, Chief Investigator, at Tyler, and under the direct supervision of Jimmie Inglish of Kilgore, who had charge of that territory; that the nature of his work was to gauge refinery and pipe line tanks; that his work, however, was confined to independent refineries and independent pipe lines; that his instructions from Jimmie Inglish and Mr. Whittier, who apparently received their instructions from Mr. Ryan, as they went back and forth from the office at Kilgore to the office at Tyler and were in constant telephone communication, were to go upon the tanks of refineries and pipe lines without their knowledge or consent and gauge their tanks and obtain evidence, if possible, as to whether or not they were shipping in interstate commerce oil that was produced in excess of the Railroad Commission's orders, that, in accordance with these instructions, he went from time to time [fol. 58] upon the tanks of the various independent refineries in the Kilgore District in search of evidence as to whether any of them were shipping excess oil or refining excess oil and shipping the products produced therefrom in interstate commerce; that he never at any time asked any owner or refinery operator for permission to gauge their tanks and that he would turn in reports as to his findings to Jimmie Inglish.

He further stated that on or about the 6th or 7th of September, 1933, Jimmie Inglish advised him that the Panama Refining Company had brought a suit against Mr. Ryan and the Federal agents to restrain them from coming upon its property and to relieve them from making reports; that he was instruced to find some evidence against the Panama Refining Company as to its shipment of excess oil in interstate commerce or gasoline manufactured from excess oil; that in accordance with his instructions, he thereafter gauged the tanks of the Panama Refining Company without its knowledge in an effort to find evidence of it receiving excess oil or shipping excess oil or gasoline manufactured from excess oil, but was unable to find any evidence of this and so reported to Mr. Inglish; that he was told to find some evidence of law violation on the part of the Panama Refining Company before its suit came up in Tyler, for if he found this evidence, it would help the government in its suit, but that he was unable to find any such evidence. He further stated that during the time of his employment by the Department of the Interior, he asked Jimmie Inglish how long he thought the jobs as investigators for the Government would last and he stated only so long as they could find evidence of violations of the law.

The Plaintiffs introduced in evidence a statement by F. R. Stapp, who stated that he is manager of the loading [fol. 59] rack at Kilgore, Texas, known as the Texas Unity and has been for the past year; that on Saturday, November 4, 1933, Jimmie Inglish, an employe of the Bureau of Investigations of the Department of the Interior, came to him and asked him to make an affidavit to the effect that on September 23, 1933, A. F. Anding was running oil through a certain pipe line which is known as the Franklin Adams line which was connected with said loading rack; that he told Mr. Inglish that he could not make such affidavit, as he did not know that Mr. Anding or anybody else was running oil through said line and loading through said loading rack on said date; that, on the other hand, according to his knowledge of said loading rack, there had been no oil run through said line; that about October 1st he broke the said line out of said loading rack and no oil was spilled on this occasion; that if any oil had been run through this line since Mr. Anding had put in his connections into the loading rack at least 10 or 15 barrels would have spilled out at the time of breaking out said connections; and that Jimmie Inglish then stated to him that as an agent of the Federal Government he then and there subpoenaed him to appear before A. D. Ryan at 815 Citizens National Bank Building, Tyler, Texas, at 8:30 o'clock A. M., Monday, November 6, 1933.

The Plaintiffs introduced in evidence a statement by W. I. Jones, who stated that for the last year he has been employed by the Panama Refining Company of Kilgore, Texas; that on or about September 5, 1933, he was Refinery Yard Foreman for the Panama Refining Company; that as a part of his duties, he installed a pipe line from the refinery to the north end of the loading rack used by the Panama Refining Company, which is a privately owned loading rack; that this pipe line was installed for the purpose of loading in tank cars from the refinery crude oil, fuel oil, or any other petroleum products; that immediately [fol. 60] after this line was installed, R. L. Knight, an Agent of the Department of the Interior, and another agent by the name of McClure, came to the place where said pipe line was connected with the loading rack and asked why the pipe line was installed; that he informed them that it was installed for the purpose of loading crude oil, fuel oil, and other by-products that might be shipped from time to time by the Panama Refining Company over the railroad; that Mr. Knight informed him that the pipe line would have to be disconnected since the Federal Government would not permit the same; that he asked Mr. Knight what objections the Federal Government had to the pipe line and Mr. Knight stated that he had decided that it was installed for the purpose of running '''hot'' oil; that he advised him that he was mistaken that it was installed for the purpose of loading crude oil, fuel oil, gasoline, kerosene, or any other products that the Panama Refining Company might desire to ship when it was shipped direct from the refinery, as the line was connected with the discharged pumps located at the refinery used for loading out commodities from the refinery and that said line was installed for that purpose only; that Mr. Knight replied that it didn't make any difference for what purpose the line was installed; that it could not be used; that Mr. Knight then and there stated that if he attempted to use the line that he would take him to jail immediately. He further stated that Mr. Knight was armed with two large six-shooters at the time and stated that he would have an agent of the Department of the Interior placed on each end of the loading rack day and night for the purpose of preventing the use of said line by the Panama Refining Company, and if it was ever used against his orders that he would lodge him in jail immediately; that said pipe line was, in truth and in fact, installed only for the purpose as above stated, and was not installed for the purpose of transporting what is known as "hot" oil and that the Panama Re- [fol. 61] fining Company has refrained from using said line for any purpose since the date of said threats so made by Mr. R. L. Knight, and until its case against A. D. Ryan can be determined by the Federal Court, for the reason that the officers of the Panama Refining Company believe that if they should use it without the protection of an order from said Court, the said Knight will carry out his threats as aforesaid.

The Plaintiffs introduced in evidence a statement by P. B. Goodwin, who stated that he is President of the Upshur Refining Company and has been so employed since its incorporation in Texas in March, 1932, or thereabout; that during the period of his employment with said corporation, it has been engaged in the manufacture or refining of crude oil products from crude oil in the East Texas Field; that he is acquainted with the operations of the Lake Refining Company, Inc., Carnation Refineries, Inc., Locke Refining Company, Goodson Refining Company and the Lotus Refinery and of his own knowledge knows that they are engaged in the business of refining or manufacturing of crude oil into its by-products; that the crude oil they purchase comes from within the State of Texas; and that all refining and manufacturing they do is done within the State of Texas. He further stated that about the 3rd of September, 1933, J. G. Floyd, in company with Glen Briscoe, called at the office of the Upshur Refining

Company in Gladewater, Texas, and Mr. Joe Hemphill was also with them; that they represented that they were agents of the Department of the Interior, Bureau of Investigations, but did not exhibit any credentials; that on that day they presented him with forms of reports and stated that they wanted them filled out daily, in accordance with the orders of the Department of the Interior; that after they showed him how to fill them out, they then wanted to guage the crude oil tanks which he permitted them to do, after they had stated that the same was in [fol. 62] accordance with the orders of the Department of the Interior; that since that date, he has caused said reports to be properly filled out daily and delivered to some agent of the Department of the Interior in an attempt to comply with all of the orders of the Department of the Interior; that among the agents that called at the Upshur Refining Company's plant at various times were Messrs. Floyd, Dupree, Briscoe, Hemphill, Parker, Guinn, Flanagan and Martin; that after several calls of the various agents, he consulted his attorney seeking his advice about what was the proper thing to do against what he thought was an unreasonable and improper invasion of their property rights; that his attorney advised him to comply with all demands and requirements as promulgated by any of the various Federal Departments and officials until such time as the Federal Court could finally adjudicate the matter upon a proper petition filed therein. He further stated that after the preliminary hearing held before Judge Randolph Bryant in October, 1933, in Tyler, Texas, his attorney advised him to continue to comply with all of the demands and requirements, but that he felt that in view of the testimony that it was not necessary to comply with the requests made by the various officials; that accordingly he instructed all of the employes to comply with all of the demands and requirements of all of the agents and to ask each and every one whether or not the information sought was by demand, requirement, or request; and that since that time the Upshur Refining Company has operated its business upon that basis. He further stated that about the 5th day of October, 1933, Mr. J. G. Floyd called at the office of the Upshur Refining Company and asked for a copy of a check and the stub showing payment to the Refinery Products Company for oil purchased about the

28th day of September; that Mr. Floyd was referred to Mr. Deavenport and asked for the information above stated to which Mr. Deavenport replied and informed [fol. 63] Mr. Floyd that it was the intention of the Upshur Refining Company to comply with each and every demand and requirement of the Federal Government and its agencies and wanted to know whether or not the information sought was a demand or requirement or just a request, and that if he, Mr. Floyd, would give him a letter to that effect the information sought would be furnished; that Mr. Floyd first stated that he would give him a letter to that effect but apparently changed his mind and stated that he would get a letter from Mr. A. D. Ryan; that on the 7th day of October, 1933, Mr. Floyd returned to the office and handed Mr. Deavenport a letter, said letter being in substance as follows:

"United States Department of the Interior, Office of the Secretary, Washington

Gladewater, Texas,
Oct. 6, 1933.

Mr. Jim Davenport, Upshure Refinery.

Dear Mr. Davenport: Would appreciate it if you would let Mr. J. G. Floyd of the Division secure a copy of check and stub showing payment to Refinery Products Co. for oil purchased about the 28th of Sept.

Very truly yours, A. D. Ryan, Spec. Agent in Charge."

that upon presentation to the latter of the letter, Mr. Deavenport informed Mr. Floyd that it was not the kind of a letter he asked him to get but that if he would sign a receipt on the back of that letter of the information required as per the letter addressed on the reverse side and that the same was as per the demand of Mr. A. D. Ryan, he would then furnish the information, to all of which Mr. Floyd agreed, signing the receipt therefor in substance as follows:

[fol. 64] "This will acknowledge receipt of the information required as per letter addressed to you on the reverse side of this letter as per the demand of Mr. A. D. Ryan.

(Signed) J. G. Floyd, Dept. Interior."

that upon the signing of the receipt, the check was delivered to Mr. Floyd for his approval and inspection; and that the check in controversy showed the payment to the Refineries Products Company, Inc., by the Upshur Refining Company covering crude oil purchased from them. He further stated that on the 31st day of October, 1933, Mr. Joe Dupree, in company with Mr. William E. Guinn, called at the office of the Upshur Refining Company and made an outright demand to gauge the crude oil tanks of the Upshur Refining Company; that they were informed that if it was not a request, that if it was a demand and a requirement to do so, they would be allowed to gauge such tanks, to which they replied that they had instructions to gauge those tanks, that they were going to gauge the tanks, and that they were demanding the right to do it; that they were permitted to gauge the tanks at that time in compliance with that demand; and that on the 3rd day of November, 1933, Mr. Glen Briscoe, in company with another man, came upon the property of the Upshur Refining Company, proceeded to gauge the tanks and informed the Gauger, Mr. C. F. Lindsey, that he did not need any permission to gauge the tanks and proceeded to gauge them without the consent of any person whatsoever connected with the Upshur Refining Company.

The Plaintiffs introduced in evidence a statement by Edward Rose, who stated that he is the owner of the Canyon Refining Company near Kilgore, Gregg County, Texas; that upon numerous occasions during the months of September and October, 1933, J. W. Smith and Mr. Pontius, [fol. 65] who stated that they were employed by the Bureau of Investigations, Department of the Interior, under the supervision of A. D. Ryan of Tyler, Texas, as well as other agents of the Department of the Interior, came upon his refining property by force and without his consent and over his protest and gauged his tanks; and that this was done on numerous occasions after he had filed suit in the Federal Court at Tyler against Mr. Ryan.

The Plaintiffs introduced in evidence a statement by R. B. Knight, who stated that he is President of the Carnation Refining Company, a corporation, and held that position on the 5th day of September, 1933; that on the 5th day of September, 1933, J. G. Floyd, in company with another party, whose name he does not remember, called at his office at Gladewater, Texas, and represented that they were in the employment of the Department of the Interior of the United States Government as Special Investigators, but did not show any credentials; that they presented him with printed forms and stated that these forms were to be filled out daily in detail, an affidavit made thereto and were to be ready each and every day until further notice; that they demanded that these forms be made out the first day of September, 1933, and continued thereafter. He further stated that at the same time Floyd said and demanded that they had the right to gauge the tanks of the Carnation Refining Company; that Floyd did not gauge the tanks himself but later on that same day two other men whom he did not know gauged the tanks and questioned the operator at length; that he later learned that one of these men was Dupree, who is an Agent of the Department of the Interior; that he did not oppose the gauging of the tanks at this time for fear that he would get in trouble; and that later, after consulting his attorney, he refused them permission to gauge the tanks, as well [fol. 66] as refused to make the reports demanded. He further stated that this procedure was followed by various other persons claiming to be agents of the Department of the Interior, among whom were men by the name of Flanagan, Quinn, Hemphill, and Briscoe; that there were others whose names he does not know; that they repeatedly called at his office and asked for these reports and also asked to gauge the tanks and also went on the Carnation Refining Company's property and tried to trace out their pipe lines and stopped their employes from their work and asked them many questions concerning where he purchased oil and where it came from all of this being done without consent; that on or about October 23rd and 24, 1933, Briscoe and Parker demanded the reports and demanded the right to gauge the tanks; that at this time, Briscoe asked him many questions with reference to whether or not he purchased the oil from a certain specified lease; that he also asked him to give him the total amount of crude oil he had run for the months of September and October, 1933; at this time, Mr. Tom Patton, who is Vice-President of the Carnation Refining Company, was present and he, Mr. Knight, asked Mr. Briscoe if he had specific instructions to demand this information and he stated that he had and that it was in his line of duty to do so; that on or about the 2nd day of November, before 9 o'clock A. M. six different men at least made three different gauges of his tanks and after the gauges were made on that date and about 10 o'clock A. M., he was served with a warrant of arrest by Deputy United States Marshal Stanley, who granted the privilege of going to Tyler later that day to appear before United States Commissioner Paul Kern, who set his bond at $1000.00, which he made and he was thereupon released; that he has never at any time knowingly and intentionally violated any valid law of the United States or of Texas; and that this is the first time [fol. 67] that he has ever been arrested or charged with any offense in violation of any law.

The Plaintiffs introduced in evidence a statement by Ed Kendrick, who stated that he is Superintendent of the Lake Refining Company; that one night during the early part of September, 1933, he was asleep at his home when Mr. Soape, an employe of said Company, and Mr. Dupree woke him up; that Mr. Dupree informed him very distinctly that he was going to gauge the tanks, stating that he was in the employment of the Federal Government; that he asked Mr. Dupree to wait until he dressed, in order to go gauge the tanks with him; that Mr. Dupree informed him that it wasn't necessary for him to dress since he would go any way whether he was with him or not; that he informed Mr. Dupree that he had a night watchman and he had his orders and, no doubt would carry them out, so then Dupree waited until he dressed; that they both together gauged the crude tanks; that Mr. Dupree informed him that he was sorry about the way Mr. Soape had acted and no doubt would cause him, Mr. Soape, some trouble and that Mr. Dupree was very antagonistic all the way through.

The Plaintiffs introduced in evidence a statement by R. P. Soape, who stated that he is employed by the Lake Refining Company of Gladewater, Texas; that one night during the early part of September, Mr. Joe Dupree came onto the property of the Lake Refining Company and said that he wanted to gauge the tanks holding crude oil, at the same time telling him that he was employed by the Depart-

[fol. 68] ment of the Interior; that he asked Mr. Dupree if he had permission to gauge the tanks from the office and he said that he did not; that he told Mr. Dupree that he would first have to get permission from the office; that Mr. Dupree said that he did not have to get permission from anyone, and then pulled out a little book and asked him to put his name on it, which he did not do; that he, Mr. Soape, did offer to get Mr. Kendrick and if he said it was OK he would then permit Mr. Dupree to gauge the tanks; that Mr. Dupree insisted that he not wake up Mr. Kendrick, who was then asleep; since he was going to gauge the tanks anyway; that he, Mr. Soape, however, woke up Mr. Kendrick and left Mr. Dupree talking to Mr. Kendrick; that before leaving them, however, he heard Mr. Dupree tell Mr. Kendrick there was no use for him to put on his clothes to go with him to gauge the tanks; and that was the last he saw of them until Mr. Kendrick and Mr. Dupree passed him on their way to gauge the tanks, so he thought.

The Plaintiffs introduced in evidence a statement by John Kraker, who stated that he is Secretary, Treasurer and Manager of the Lake Refining Company. He further stated facts which substantially agree with those stated by Mr. R. B. Knight summarized above.

The Plaintiffs introduced in evidence a statement by N. S. Locke, who stated that he is President of the Locke Refining Company and further stated facts which substantially agree with those stated by Mr. R. B. Knight summarized above.

[fol. 69] The Plaintiffs introduced in evidence a statement by J. P. McGee, who stated that he is operating the Goodson Refining Company in Upshur County; that about Monday, October 30, 1933, Mr. Parker, in company with another man, both of whom represented that they were with the Department of the Interior in the Division of Investigations, visited him in his office and asked the right to gauge his tanks; that he stated to them that he had rather they would not gauge the tanks; that Mr. Parker stated that they were going to gauge them anyway and they proceeded to do so; that on or about Wednesday, November 2, 1933, Mr. Martin, who represented that he was in the employment of the Department of the Interior, in the Division of

Investigations, asked for the reports; that he asked whether the reports were essential; that Mr. Martin demanded them for the Department of the Interior; that Mr. Martin came back to his office on the following Friday and wanted the reports; that he refused to make them; that they have gauged his tanks every night since; that they do not ask permission and permission has never been given for them to invade his property and gauge his tanks; that Mr. Martin further asked who owned the plant and said: "I know that a little refinery cannot operate and pay the posted price."; that they gauged the tanks on November 4, 1933, and failed to ask permission from anybody and went on the property anyway; that he told Mr. Martin that he heard Mr. Ryan say on the witness stand in Tyler that unless permission was given they would not gauge the tanks or take reports, at least that is what he understood Mr. Ryan to say, to which Mr. Martin said there and then that "New rules had been made and we now demand the reports."; and that if there have ever been any new rules and regulations he has never been informed as to who made them nor when they were made.

[fol. 70] The Plaintiffs introduced in evidence a statement by E. J. Ekstrom, who stated that he has been, since July 15, 1933, employed as Office Manager of the Southport Petroleum Company at its refinery near Kilgore, Texas; that practically continuously since about September 1, 1933, he and other officers and employes of the Southport Petroleum Company have been harrassed, molested and browbeaten in the course of their employment by various men, who represented themselves as agents of the Department of the Interior, and in particular by R. L. Knight, J. H. McClure, H. W. Pontius, G. H. Flagg and one Matthews and one Inglish; that these agents have many times come to the office of the Southport Petroleum Company and demanded of him and other officers and employes of said Company whether they were going to make certain reports demanded by said agents and when they were told the reports would not be made, they would start away and then immediately return and make such statements as: "You are not going to change your mind, are you?" and "You know you are not going to make these reports?"; and that these agents came in the office of the Southport Petroleum Company at all hours of the day without permission and against the protests of the officers and employes of the Southport Petroleum Company and through their presence would prevent the officers and agents of the said Company from carrying on the business of the Company, and prevent them from making private business transactions for the Company. He further stated that about September 22, 1933, these agents commanded one W. B. McDuff, gateman for the Southport Petroleum Company, to place his hand on the gate of the fence around the refinery as if he was barring their entrance into the refinery and allow his picture to be taken in such position; that these agents very frequently encountered various employes of the Company, [fol. 71] such as night watchmen and tank gaugers, and questioned them about the Company's business, inquiring as to the amount of oil the refinery was handling, where it was coming from and where it was going to, causing such employes to lose time from their work and thus hampering the business of the Company, that frequently these agents will follow employes of the Company when leaving the plant or when returning to the plant; that they frequently enter the Company's premises, go on the Company's tanks and gauge them over the protest of the officers and employes of the Company and some times will return and gauge the tanks several times in one day, thus constantly interfering with the business routine of the Company and the morale of the employes; that on several occasions certain men would come on the Company's premises at night in a Plymouth sedan and sneak in the plant but when discovered by the employes of the Company, they would immediately drive off; that said Plymouth sedan is one used by the Department of the Interior and is driven by one Matthews, a Department of the Interior Agent; that he himself has recognized automobiles following him when he leaves the plant, or is otherwise off the Company's premises, as automobiles used by the Department of the Interior.

Plaintiffs then offered a certified copy of a criminal complaint filed against E. J. Ekstrom in the Tyler Division of the Eastern District of Texas charging before United States Commissioner for the said District and Division of Texas that the said E. J. Ekstrom in violation of Section 9 (c) of the Act of June 16, 1933, of the United States did unlaw- [fol. 72] fully refuse to furnish representatives of the Government information and reports necessary to successfully administer said Act of June 16, 1933. Criminal complaint is signed by "J. H. Leech, Special Agent," and sworn to before United States Commissioner. Further, the warrant of arrest carried a request of the Commissioner to issue warrant for the arrest of the within named E. J. Ekstrom and is signed by J. Howard Marshall, Jr., Special Assistant to the Attorney General.

Plaintiffs then offered in evidence a copy of the Code of Fair Competition for the Petroleum Industry.

Defendant's Case

The defendants introduced in evidence a statement by Edward B. Swanson, who stated that he is Chief Economist of the Petroleum Economics Division, Bureau of Mines in the City of Washington, District of Columbia; that he has held this present position for five years (including the period in which he served as Acting Chief prior to final appointment); that in connection with his duties he has had supervision of the collection of statistics of production and refining of petroleum within the several states of the United States; and that for two years prior thereto he served as Assistant Chief of the Division. He further stated that the following is a true statement of the production, refining, consumption, etc., of petroleum and the refined products thereof, in the State of Texas and the exports and shipments to other states of petroleum and refined products thereof from the State of Texas:

[fol. 73]

Supply and Demand of Petroleum and Products Thereof in Texas in 1932

(Figures in Barrels)

Supply within Texas:		
Production of crude oil	312,478,000	
Production of Natural Gasoline	8,836,000	
Imports of crude oil [1]	945,000	
Receipts of crude oil from other states [1]	23,353,000	
Decrease in stocks of crude oil and refined products	15,137,000	
Total supply from Texas		360,749,000

Demand within Texas:			
Gasoline		17,883,000	
Lubricants (3% of above)		536,000	
Gas, Oil and Fuel Oils (1931) [2]:			
Railroads	17,144,000 [3]		
Steamships	12,483,000 [4]		
Other	16,518,000 [5]		
		46,145,000	
Other refined products		23,564,000 [6]	
Crude as such plus losses		1,221,000	
Refining Losses		5,233,000	
Total Demand within Texas			94,582,000
Shipped from Texas:			
Exports			
Crude	7,680,000		
Refined products	21,684,000		
[fol. 74]		29,364,000	
Deliveries to other states:			
Crude	143,170,000		
Refined products	93,633,000		
		236,803,000	
Total shipped from Texas			266,167,000
Total demand for Texas Oils			360,749,000

Summary

Oil used within Texas	94,582,000 barrels, or	26 per cent
Oil shipped out of Texas	266,167,000 barrels, or	74 per cent
Total	360,749,000 barrels, or	100 per cent

[1] Imports and receipts from other states of refined products are negligible.

[2] No figures for gas, oil and fuel oil consumption in Texas for 1932 are available, but the 1932 figures will closely approximate the 1931 figures.

[3] Total deliveries to railroads, some portion of which, possible 20% (3,428,000 barrels) is actually used outside of State.

[4] Delivered at Texas ports for bunker fuel—all consumed outside of Texas.

[5] Of this amount 14,284,000 barrels are consumed in the production and refining of petroleum.

[6] Some minor refined products such as kerosene, asphalt, etc., included in this figure, leave Texas, possibly as much as 15% of the total, which would amount to 3,535,000 barrels.

To arrive at a fair figure for the percentage of Texas oil which is consumed outside of Texas as against the total consumption of Texas oil by consumers other than the oil industry the following deductions from the figures for de- [fol. 75] mand within Texas are reasonable and proper:

Oil delivered to ships at Texas ports for bunker fuel	12,483,000
Oil consumed by the oil industry in production and refining of petroleum	14,284,000
Refinery losses	5,233,000
Total deduction	32,000,000

The fuel oil delivered to railroads within Texas and consumed outside of Texas (footnote 3 above) and the kerosene, asphalt, etc., which leave Texas (footnote 5 above) which together total almost 7,000,000 barrels are not deducted above because of uncertainty as to exact quantity.

With this modification of the foregoing tabulation "Supply and Demand of Petroleum and Products thereof in 1932" the following summary is true:

Oil used within Texas by consumers other than the oil industry	62,582,000	barrels or 18 per cent
Texas oil used outside of Texas	278,650,000	barrels or 82 per cent
Total	341,232,000	barrels or 100 per cent

The monthly statistics of the Bureau of Mines assembled for the first eight months of 1933 do not indicate that any material change has occurred during the present year in the percentages of oil used within Texas and Texas oil used outside of Texas.

[fol. 76] He further stated that the foregoing are official figures of the United States Bureau of Mines and that the above computations are accurate to the best of his knowledge and belief.

The Defendants introduced in evidence statements by:

Ralph H. Kinsloe, Vice-President & Gen. Mgr., Magnolia Pet. Co., Dallas, Tex.,

R. L. Wheelock, Receiver for Central Texas Refining Co., Corsicana, Texas,

H. S. Lane, Crown Central Petroleum Corporation, Houston, Texas,

H. C. Wiess, Chairman Regional Refining Company, Houston, Texas,

C. R. Starnes, President, Texas Oil Products Company,

J. D. Wrather, President, Overton Refining Company,

L. B. Haberle, Manager and Vice-President of Chief Refining Company,

M. Taxman, Secretary-Treasurer, Taxman Refining Company,

H. W. Bass, Secretary H. W. Bass Drilling Company,

Roy B. Jones, President, Panhandle Refining Company,

D. G. Gray, Manager, Waggoner Refining Company, Inc.,

John Hancock, Vice-President Texas & Pacific Coal & Oil Company,

Jno. G. Pugh, Assistant Manager, Southwest Division, Sun Oil Company,

[fol. 77] each of whom stated that he has been familiar with conditions in the oil business in the State of Texas for many years and especially with respect to the purchase of crude oil for refinery operations and the sale of refined products; that a large part of the oil produced in Texas is transported out of the State; that while a large amount of crude oil is refined in Texas, only a small per cent is consumed in the State, a large part, probably 85%, of the refined products being shipped out of the State for sale and consumption. Each further stated that as long as production of crude oil is reasonably in balance with consumers' demand, conditions tend to be stable and competition normal; that whenever production has been in excess of such demand, distress prices have followed with oil selling far below reasonable cost of production; that a similar reaction takes place with respect to refined products; that the effect is not merely local, as the price cutting spreads and disturbs markets through the entire nation; that there has been a great deal of oil, known as "hot" oil, produced in excess of the allowables fixed by the Railroad Commission; that usually it does not get to market in open channels, but is secretly produced and sold almost invariably at prices below the prevailing market price; that a part of this "hot" oil has been purchased by small refineries and especially those located near the field where the "hot" oil is produced; that these conditions have been notorious in East Texas; that the refineries which purchase the "hot" oil under the market price sometimes sell part of it, making shipments outside of the state; and that much of it is refined in Texas by the purchasing refineries and the refined products reach the consumer market in and outside the state at prices far below those which would exist if prevailing prices had been paid for the crude. Each further stated that competition of this character, which is believed [fol. 78] to be unfair, almost invariably affects prices over a wide area; that those refineries which have not purchased "hot" oil must, if they meet competition, cut their prices to those of the "hot" oil refineries with the result that distress prices become general, both as to crude and as to refined products and the entire national market is demoralized, great losses occur to the royalty owner and the law abiding refiner and producer; and that beyond any question such sales of "hot" oil and the refined products even if confined to the State of Texas materially affect and burden interstate commerce in oil and products and prevent a normal flow of commerce in such commodities.

Each further stated that it is impossible by looking at a barrel of oil or its refined products to tell whether the oil was legally produced; that it is extremely difficult to check all producers over a twenty-four hour period; that this difficulty is greater in East Texas where refineries own production or are hooked up directly to producing wells; that vast pipe line systems, both gathering and trunk lines, together with other methods of transportation, are so numerous and intricate that it is extremely difficult to trace the source of oil or determine whether the movement is intrastate or interstate; that a simple, reasonable and effective way to check production and trace the movement of oil and products is to ascertain the amounts received or purchased by refineries, the name of the seller or person delivering and the subsequent disposition of the oil or its products; that forms have been provided for this purpose which can readily be filled in and the work causes no undue inconvenience or burden and that many refiners gladly give the information desired.

Each further stated that in his opinion large quantities of "hot" oil and products at distress prices have moved in interstate, as well as intrastate, commerce; that this move-[fol. 79] ment destroys normal markets and prices, materially affects the normal flow of such commodities between states, and causes unfair and destructive competition; that, to detect such "hot" oil or its products, or both, it is necessary to require reports from refineries and the use of other means, such as inspection, to check the accuracy of such reports; and that it is no undue burden to subject refineries to inspection and to require them to make reports in compliance with the Rules and Regulations already issued.

The Defendants introduced in evidence a statement by Edward T. Moore, who stated that he is President of Simms Oil Company, a Texas corporation, with principal offices in Dallas; that one of the main Capital Assets of this Company consists of a complete refinery located in West Dallas; that this refinery has a maximum crude throughput capacity of 4,000 barrels daily and was operated continuously from the date of its acquisition in June, 1925, until January 20, 1933; that it represents a Capital Investment of more than $1,250,000.00, and was generally conceded to be one of the most efficient plants in North Texas; that when operated on North Texas crude, it is capable of producing 66.38% of gasoline, 4% kerosene, and 26.22% fuel, which indicates an unusually high degree of efficiency when compared with the yields of approximately 36% to 38% gasoline obtained from North Texas crude by the use of the ordinary skimming processes; and that through an exchange arrangement, Simms Oil Company has been able to obtain, delivered at its West Dallas plant, North Texas crude for East Texas crude on a barrel for barrel basis, plus transportation charges to the refinery.

[fol. 80] He further stated that in the year 1932, the throughput of this plant amounted to more than one million barrels of crude oil; that the results of operation for that year, after taking into consideration the depreciation of the plant, the overhead and selling expense, the operation and maintenance expense, the transportation of oil and the cost of the crude, based upon the established posted prices thereof, resulted in an aggregate loss of $350,000.00, or approximately 35¢ per barrel, after making allowance for the amount realized for the refined products produced; that these disastrous results occurred in spite of the fact that operating expenses were pared to a minimum, a 25% reduction being accomplished by the end of the year from the costs experienced at the opening of that period; that the losses from operation at the end of the year were so great it became necessary on January 20, 1933, to discontinue further operation of the West Dallas plant; and that this discontinuance necessitated the laying off of some sixty-odd refinery employees, and has caused a $1,250,000.00 investment to remain idle.

He further stated that during January and each subsequent month of 1933, they have carefully weighed the relative costs of crude, transportation, refinery operation, depreciation, overhead and sales, comparing these costs with the possible realization from the sale of refined products as represented by the prevailing market prices for gasoline and fuel oil, and that in not one single month of the first ten months of 1933 would it have been possible to operate this West Dallas refinery upon a break-even basis.

He further stated that this state of affairs is attributed to the conditions existing in East Texas; that a large number of refiners in that field have been able to produce gasoline, by inefficient methods and with materially lower [fol. 81] yields, and to sell the same at prices far below his costs; that he knows the degree of efficiency of the East Texas refineries is less than his and he can only assume that they are able to produce this gasoline by reason of some advantage they have through their ability to secure their crude oil requirements at prices below the prevailing posted prices thereof, and that in his opinion many of these refineries are operated on "hot oil", and where "hot oil" is used in the operation of a refinery, gasoline taxes are being evaded.

He further stated facts which agree in substance with those stated by Mr. Kinsloe and others summarized above.

The Defendants introduced in evidence a statement by J. R. Pearson, who stated that he has been an independent oil producer for the past twenty years, with properties in the State of Texas and properties in the East Texas Field for the past 2½ years; that he has been active in a personal way in assisting the Railroad Commission and the Military forces in an endeavor to see that the proration laws were obeyed; that the reason for this activity is that he and his partners own oil properties in the East Texas Field which with stabilization and orderly production are worth over $1,000,000.00, but that with stabilization such as has existed for the past two years, he would lose these properties, leaving him in debt over $300,000.00. He further stated that he had abided by the proration laws although others have become rich by breaking them; that he believes the proration program to be proper and right; that during the [fol. 82] period of his operation in the Field, he has had close contact with all classes of operation, including production, refining, pipe lines and trucking; that practically all the refiners in the Field have their own pipe lines or gathering systems and many also own their own wells; that these refineries do not use seals or lock stops on tank batteries located on the leases, with the result that the lock stops can be opened at any time, allowing oil to flow to the refinery at the same time the well is producing into the same tanks; that he is familiar with the small pipe line systems connecting these refineries in the East Texas Field; that these lines are so interconnected that oil can be delivered from practically any point in the Field to these refineries and can be delivered from one refinery to another; that royalty owners whose leases are connected to these refineries have no way of knowing how much oil is produced; that he personally owns an interest in two leases operated by the East Texas Refinery; that in the months of January, February, March and April, 1933, they sent him checks with statements attached for the proper allowable and in the same envelope each month was another check without the statement for 8 to 10 times the amount of the allowable check; that he returned these checks and requested a statement of the oil run, which it took several months to obtain; that on checking these figures on the oil run, it was discovered that the greater part of this oil, which was reported for January, February, March and April, 1933, was really run in June, July, August, September and December of 1932, when the posted price for oil was higher; that the refineries paid others 40¢ a barrel at the same time they paid him 25¢ a barrel for oil from the same lease; that daily reports from the refinery would have prevented this overproduction; that because of the intricate system of pipe line connections between wells and refineries [fol. 83] and between refineries, it is absolutely impossible to know the amount of oil the refineries handle or whence it comes, unless reports are required; that reports from refineries are necessary to supplement reports from pipe lines and producers; that many refineries in the East Texas Field are making these reports and that he believes the reason others refuse to make the reports is because it will disclose the amount of hot oil which they are handling.

The Defendants introduced in evidence statements by A. L. Cone, Employe, Taylor Refining Company, Tyler, Texas,

P. G. Lake, Operator, Hunt Production Company, Tyler, Texas,

H. L. Hunt, Operator, Hunt Production Company, Tyler, Texas,

Roy Lee, Employe, Hunt Production Company, Tyler, Texas,

Mac Kennedy, General Manager, Taylor Refining Company, Tyler, Texas,

each of whom stated that he is connected with the Production and Refining Company mentioned in connection with their names above; and that as a part of his duties, he has prepared monthly reports under Regulations IV and V of the Department of the Interior pertaining to the production and refining of crude oil. That the time required for compiling these reports has been nominal (Mr. Cone estimated 7½ minutes); that, based upon his experience in the [fol. 84] preparation of the reports the data required is necessary in connection with the successful operation of refineries and production; and that he does not consider the reports and the data called for under said regulations as being burdensome or working a hardship upon him.

The Defendants introduced in evidence a statement by **Paul Bramlette**, who stated that he has resided in East Texas for a number of years, and is interested in oil properties in what is known as the East Texas Oil Field; that prior to July 15, 1933, the date on which Secretary Ickes issued Regulations under the National Industrial Recovery Act, a chaotic condition existed in this field, that the Proration Laws of the State of Texas were utterly disregarded and excess oil in the sum of hundreds of thousands of barrels monthly entered the stream of interstate commerce; that since July 15, 1933, however, there has been a marked improvement in the field and excess oil has not been produced in appreciable amounts, and that the reports required under the Regulations of the Department of the Interior have not worked a hardship upon anyone and, in his opinion, the reports required under the Regulations are reasonable and are the best and most satisfactory means of enforcing Section 9(c) of the National Industrial Recovery Act.

The Defendants introduced in evidence statements by R. W. **Fair**, President, McMurrey & Fair, Inc.; J. W.

McCulloch, G. C. Finch, B. A. Wight, L. N. Crim, A. O. [fol. 85] Godfrey, Robert E. Nolen, W. R. Nicholson, E. M. Bramlette, S. W. Ross, M. H. Bivins, P. A. Wylie, Fred S. Markham, L. W. Turner, John R. Alford, H. A. Pace, F. L. Sartain, A. R. Sharp, W. W. Wiss, R. A. Harman, Ben Laird, John T. Crim, Joe Cross, A. S. Jurvis, Maxie Wilson, S. S. Cook, R. W. Fair, President, Fair & Thompson, Inc., George I. McKee, J. A. Knowles, J. E. Bagwell, J. S. Elder, W. D. Northcutt, Jr., J. K. Wadley, R. T. Forman, L. S. Sartain, J. Malcom Crim, Roy H. Laird, R. L. Bauman, J. W. Barton, Vice-President, Longview Investment Company; Clark Dickson, J. F. Stuckey, Frank Elder, J. M. Dickson, C. G. Strong, N. B. Bean, Harold Vance, Douglas Godfrey, E. G. Green, W. B. Smith, J. T. Jeter, W. H. York, H. Hunter, J. C. Hunter, Carl B. Everett, John Droppleman, Rade Kangerga, E. C. Laster, Walter R. Smith, Mrs. Lon Emma Coolidge, J. A. Birdwell, L. A. Grelling, Jr., O. M. Boren, L. W. Lowe, G. Clint Wood, B. J. Peasley, W. E. Wylie, J. M. Shaw, H. M. Hale, E. W. Reagan, M. F. Thompson, R. S. Shaw, J. H. Spivey, A. P. Cary, J. E. Glover, W. C. Windsor, Bryan W. Payne, C. L. [fol. 86] Thompson, W. P. Moore, E. Fred Herschbach, Arcadia Refining Company; A. G. Morton, J. Solon King, T. A. Johnston, E. S. Holt, M. Kangerga, M. W. McVey, F. C. Condon, H. P. Leverette, H. A. Baker,

each of whom stated facts which agree in substance with the statement by Paul Bramlette summarized above.

The Defendants introduced in evidence statements by

C. A. Loftis, Secretary of the Omega Oil Company; A. D. Bush, Secretary of the Miller-Lacy Oil Company and the Nicholson-Terrell Oil Corporation, each of whom stated that for a period of some seventeen months or more he has been engaged in the operation of oil properties in the East Texas Oil Field and has seen this field under the administration of the Railroad Commission of Texas and has also observed conditions in the field during the period when it was under martial law; that during this time there was utter disregard for the Proration Laws of the State by many operators and producers; that he had been compelled to stand helplessly by while oil from a common pool, part of which was his, was produced by these violators without regard for any property rights that he had; that many operators and producers who followed this custom of producing oil in violation of proration laws reaped enormous profits; that this disregard for law on the part of those violating it caused him untold loss, as it took from him [fol. 87] that part of the common pool to which, under the law of possession, ownership and property, was his; and that hundreds of thousands of barrels of excess oil entered interstate commerce. He further stated that, being familiar with the field, he knows there has been a great change in conditions since July 15, 1933, the date the President prohibited illegally produced oil from entering the stream of interstate commerce; that the Regulations issued by the Secretary of the Interior requiring producers and refiners and others to submit reports has not been a burden or worked a hardship upon any legitimate operator in the field; and that the preparation of such reports requires a very small amount of time.

The Defendants introduced in evidence statements by

Harry Turner, royalty owner; Edwin Lacy, royalty owner; C. L. Taylor, Fee owner; J. K. Wadley, Lease owner; R. F. Northcutt, royalty owner; Isadore Maritzke, royalty owner; Tom Richardson, lease owner; M. M. Turner, royalty owner; James R. Curtis, lease owner; F. C. Persons, royalty owner; G. C. Finch, Fee owner; George [fol. 88] W. Rhodes, royalty owner; M. H. Bivins, Secretary-Treasurer, Skipper-Bivins Oil Company,

who stated facts which in substance agree with the statement of C. A. Loftis summarized above.

The Defendants introduced in evidence statements by

M. C. Sells, J. H. Brogan, T. W. Lee, Barney Carter, C. J. Thompson, W. P. Keeling, Bert Ashton, S. S. Laird,

each of whom stated that he is engaged in the operation of oil properties in the East Texas Oil Field; that prior to July 11th, the date of the President's Executive Order prohibiting the shipment of illegally produced oil in interstate commerce, hundreds of thousands of barrels of oil were taken from the common pool to the untold injury of thousands of royalty owners in Texas and neighboring states; and that he believes that the most satisfactory means of enforcing the above mentioned Executive Order is to require monthly reports from producers, refiners, railroads and pipe lines.

The Defendants introduced in evidence a statement by J. D. Wrather, who stated that he had been engaged in the refining business in the East Texas Oil Field for many months; that the reports required by the Regulations issued by the Secretary of the Interior have not worked any hardship upon him as a refiner, and have required very little time for preparation; and that he believes the Regu-[fol. 89] lations reasonable and the best and most satisfactory way of enforcing Section 9(c) of the National Industrial Recovery Act.

The Defendants introduced in evidence a statement by H. M. Priddy, who stated that for the past two and one-half years he has spent the greater part of his time in the East Texas Oil Field with headquarters at Tyler, Texas; that prior to July 15, 1933, the date the Department of the Interior issued regulations under the National Industrial Recovery Act, very bad conditions existed in the field; that a great deal of excess oil was being produced, much of it going out of the field without any record being made which would protect the royalty owners; that oil thieves and "hot oil artists" did about as they pleased; that the Proration Laws of the State were disregarded and openly violated and he believes over 250,000 barrels of excess oil daily entered interstate commerce; that since the Department of the Interior sent its men into the field, this condition has been largely eliminated and, comparatively, a small amount of excess oil is now escaping; and that all of that of which he has any knowledge is being moved under so called tenders or by those who claim they are cleaning the tanks or treating bad oil. He further stated that he has heard of now law-abiding, reputable producer objecting to filling out the form required by the Department of the Interior and does not believe that these forms or Regulations work any hardship on any law-abiding citizens.

The Defendants introduced in evidence a statement by Gus F. Taylor, who stated that he is President of the Citizens National Bank of Tyler, Texas, and has been for many [fol. 90] years closely associated with the developments that have taken place in East Texas; that in the early months of 1933 hundreds of thousands of barrels of delinquently produced oil, oil produced in utter disregard for state regulation, were run from the field; that since July 15th, this condition has been remedied so that the amount of excess oil now leaving the field is, in fact, negligible; that in his opinion the Regulations issued July 15th and 25th, 1933, are the best and most satisfactory means of enforcing Section 9(c) of the National Industrial Recovery Act and that he believes that Federal regulation has placed the oil industry on a stable foundation to the benefit of millions of people.

The Defendants introduced in evidence statements by
M. C. Parrish, Jr., J. G. Floyd, J. N. Inglish, H. E. Tyson, R. L. Knight, and Joseph L. Quinn,

each of whom, with the exception of Joseph L. Quinn, stated that he is an Oil Enforcement Agent of the Division of Investigations, Department of the Interior; that prior to entering the employ of said Department of the Interior, he had been employed for a considerable period of time by the Railroad Commission of Texas in connection with enforcement of the proration orders of said Railroad Commission; (Joseph L. Quinn stated that he is an Oil Enforcement Agent of the said Department of the Interior and for the past 13 years prior to entering said service he had been employed by large independent oil companies and is familiar with the conditions confronting the producers, refiners and marketers in the East Texas Field); that there are [fol. 91] some 11,200 producing oil wells in the East Texas Field and that it would be almost a physical impossibility to check actual production at the well; that such check would necessitate a force of some 25,000 men; that because of the vast system of pipe lines and interconnected and interwoven gathering systems in the East Texas Field and the close proximity of producing wells to refineries, it is impossible to check wells to determine to which refinery the produced oil is delivered; that it is impossible by looking at a barrel of oil or its refined products to determine whether it was illegally produced; that it is extremely difficult to check all production over a 24 hour period, and this difficulty is greater in East Texas where refineries own production or are hooked up directly to producing wells; that vast pipe line systems, both gathering and trunk lines, together with other methods of transportation, are so numerous and intricate that it is extremely difficult to trace the source of oil or determine whether the movement is interstate or intrastate; that a simple, reasonable, and effective way to check production and trace the movement of oil and its products is to ascertain the amounts received or purchased by refineries, the name of the sellers or persons delivering and the subsequent disposition of oil or its products; that forms have been provided for this purpose which can readily be sent in and the work causes no inconvenience or burden; and that many refineries gladly give the information desired.

In addition to the above facts, M. C. Parrish, Jr., also stated that hundreds of thousands of barrels of illegally produced oil left the East Texas Field and entered interstate commerce; and that in his opinion the smaller refineries situated in the East Texas Field are the main out-[fol. 92] let for this illegally produced oil. He further stated that he has made investigations of the following named plaintiffs herein in connection with their refining and shipments of crude oil and the products thereof in commerce and has compiled the following data which he believes to be true and correct:

Panama Refinery, Kilgore, Texas

	July, 1933.
Fuel Oil	23
Gasoline	15
Gas Oil	6
Topped Crude	10
Distillate	7
	61 Cars.

	August, 1933.
Gasoline	11
Gas Oil	12
Top Crude	6
Fuel Oil	13
Distillate	8
Kerosene	1
	51 Cars.

The Panama Refinery loaded their refined products on the Texas Unity Rack and that the A & P Rack is owned by Anding and Potter, the owners and operators of the Panama Refinery. Attention is called to that part of this report covering shipments of crude oil made by various and sundry shippers from the A & P Rack during the months of July and August, 1933. Inquiries have been as to the identity of the shippers of this crude and they are not known in Kilgore, Texas.

[fol. 93] Report of Refined Products Shipments of Panama Refinery, Kilgore, Texas.

(From records of I. & G. N. Office, Kilgore, Texas.)

July 3, 1933					
GATX	14905	8115	Fuel Oil	Ed Bateman	Jewett, Texas.
STCX	8538	8052	"	Do	
PTX	4706	8078	Gasoline	Liberty Oil Co.	Dallas, Texas.
July 5, 1933					
LDLX	2043	10050	Fuel Oil	Ed Bateman	Jewett, Texas.
PTX	4651	8081	Gasoline	Goyer Co.	Greenville, Miss.
"	5510	8088	"	Nat'l O. & G. Co.	Jackson, Miss.
"	4579	8044	Gas Oil	Cooper Keller	Locust Ridge, La.
July 8, 1933					
QTX	271	8090	Topped Crude	Atlantic Pacific & Gulf.	Wichita Falls, Tex.
GATX	20145	8073	"	Do	
"	23455	8088	"	Do	
PTX	4004	8056	Gasoline	City of Dallas, Texas.	
July 9, 1933					
PTX	4602	8050	Gasoline	Kentucky Consumers Oil Co.	Nashville, Tenn.

[fol. 94] Report of Refin ed Products Shipments of Panama Refinery, Kilgore, Texas.

(From records of I. & G. N. Office, Kilgore, Texas.)

July 11, 1933					
GATX	72688	820			
PTX	5907	101 04	Topped Crude	Atlantic Pacific & Gulf Refg.	Wichita Falls, Tex.
LDLX	772	100 09	"	Do	
NOTM	6093	105 31	"	Do	
STCX	1175	100 00	"	Do	
July 12, 1933		97	"	Do	
CHIX	10105	101			
GATX	16399	100 97	Fuel Oil	H. K. Stahl Co.	Clzrion Ia.
July 15, 1933		46	Topper Crude	Atl. & Pac. & Gulf Ref.	Wichita Falls, Tex.
STCX	9199	805			
PTX	5639	101 57	Topped Crude	Atl. & Pac. & Gulf Ref.	Wichita Falls, Tex.
July 17, 1933		09	Fuel Oil	Ed Bateman	Jewett, Texas.
GATX	27499	100			
PTX	4542	80 69	Fuel Oil	Ed Bateman	Jewett, Texas.
		44	Fuel Distillate	Nat'l O. & G. Co.	Eagle Pass, Texas.

[fol. 95]

PTX	1545	824	47	Gasoline	Liberty Oil Co.	Dallas, Texas.
PTX	4603	80	42	"	Natl. O. & G. Co	Greenville, Ohio.
July 21, 1933						
TIDX	1032	99	96	Fuel Oil	Ed Bateman	Jewett, Texas.
ASIX	835	101	92	"	Do	
GATX	13434	807	79	"	Do	
STCX	9327	801	19	"	Do	
July 23, 1933						
NOTM	6169	1007	70	Fuel Oil	I. & G. N. Ry.	Palestine, Texas.
"	6107	105	00	"	Do	
I.&G.N.	10766	80	90	"	Do	
July 19, 1933						
DWOX	53	808	30	Fuel Oil	Nat'l. O. & G. Co.	Wiergate, Texas.
PTX	4844	806	63	Gasoline	Liberty Oil Co.	Dallas, Texas.
July 22, 1933						
PTX	4850	806	60	Gas Oil	Cooper Keller	Livingston, Texas.
July 28, 1933						
PTX	1848	820	94	Distillate	Cooper Keller	Calvert, Texas.

[fol. 96] Report of Refined Products and Crude Shipped by Panama Refining Co., Kilgore, Texas.

July 18, 1933					
PTX	4621	8050	Gas Oil	Cooper Keller	Ittabana, Miss.
7-19-33					
PTX	4561	8044	Fuel Dist.	Wisconsin Mot. Corp.	Milwaukee, Wis.
7-20-33					
PTX	3226	8261	" "	Natl. O. & G. Co.	Burlington, Ia.
"	4521	8061	Gasoline	Bradford Oil Co.	Kansas City, Mo.
7-22-23-33					
PTX	4042	8052	Gasoline	Primrose Pet. Co.	Anchorage, La.
"	4668	8078	Gas Oil	"	Little Rock, Ark.
"	4555	8084	Fuel Dist.	"	"
"	4407	8069	"	"	"
"	4651	8081	Gasoline	"	"
"	3273	8256	Fuel Oil	Snider Co.	Connorsville, Ind.
"	4002	8050	Gasoline	Chevrolet Mot.	Atlanta, Ga.
"	4699	8083	Gasoline	Highland O. Co.	Little Rock, Ark.
CYCX	499	8164	"	"	"
PTX	2711	8078	"	"	"
IMRX	1184	8086	Fuel Oil	Kelly Williamson Co.	Rockford, Ill.
PTX	4604	8052	Fuel Dist.	W. T. Raleigh	Freeport, Ill.
ASX	629	10100	Fuel Oil	Orenda Corp.	Wilmington, Ill.
CYCX	1059	10148	"	Wrought Washer Co.	Milwaukee, Wis.

[fol. 97]

7–24–33					
GATX	75539	10170	Fuel Oil	Wrought Washer Co.	Milwaukee, Wis.
7–25–33					
SHPX	11471	10217	Fuel Oil	Ed Bateman	Jewett, Texas.
PTX	4830	8063	Distillate	Cooper Keller O. Co.	Prestiss, Miss.
"	6087	8093	Gas Oil	"	Foley, Ala.
7–26–33					
PTX	1444	10560	Fuel Oil	Ed Bateman	Jewett, Texas.
7–30–33					
GATX	72783	8199	Fuel Oil	Rep. Creosoting Co.	Indianapolis, Ind.
NATX	7896	8088	Gas Oil	Tex Utility Co.	Kirbyville, Tex.

Report of Refined Products Shipments from Panama Refining Co., Kilgore, Texas.

August 11, 1933					
CYCX	8813	8199	Gasoline	Nat'l O. & G. Co.	El Campo, Texas.
PTX	3039	8263	"	Panama Refg.	Dallas, Texas.
"	4221	8057	Gas Oil	Nat'l O. & G. Co.	Tulot, Ark.
"	4315	8097	"	"	Iyronza, Ark.
"	1424	10957	"	Neb. L. & Power	McCook, Neb.
PTX	1052	10661	Top Crude	Phoenix Refg.	Houston, Texas.

[fol. 98] Report of Refined Products Shipments from Panama Refining Co., Kilgore, Texas.

8–12–33					
CYCX	2040	10134	Top Crude	Eastern States Pet.	Galveston, Texas.
LDLX	1338	8001	"	Phoenix Refg.	Houston, Texas.
GATX	26020	8035	"	"	"
PTX	5442	10119	"	"	"
"	5638	10100	"	"	"
"	3992	8052	Gasoline	Panama Refg.	Dallas, Texas.
GATX	29593	8106	Gas Oil	Cooper Keller	Hawkin, Ill.
8–14–33 (Probable error—See above)					
SATX	29593	8106	Gas Oil	Cooper Keller	Hawkinsville, Ia.
8–15–33					
GATX	29378	8016	Gas Oil	Cooper Keller	Leland, Miss.
"	29662	8105	"	Town of Plains	Plains, Ga.
8–22–33					
PTX	6087	8093	Gas Oil	Central Ill. Pub. Serv.	Hoopston, Ill.
GATX	27926	10188	Fuel Oil	Interstate Drop Forge	Milwaukee, Wis.
QTX	9343	8084	"	Wrought Washer Co.	" "
GATX	25768	8097	Gas Oil	Ft. Madison Gas & L. Co.	Ft. Madison, Iowa.
8–23–33					
STCX	8036	8259	Fuel Oil	Nat'l O. & G. Co.	Wiergate, Texas.

[fol. 99]

PTX	4407	8069	Gas Oil	Cooper Keller	Columbus, Miss.
"	4572	8042	Gasoline	G. C. Peterson	Lyons, Miss.
ASIX	562	10097	Fuel Oil	Eastern States Pet.	Galveston, Tex.
8–24–33					
DWOX	105	8082	Fuel Oil	Wrought Washer Co.	Milwaukee, Wis.
GATX	25716	8100	Distillate	Cooper Keller Co.	Memphis, Tenn.
PTX	4651	8081	"	Kelly Williamson	Rockford, Ill.
"	4084	8056	Gasoline	G. C. Peterson	Anderson, Ill.
"	4844	8063	"	Panama Refg.	Dallas, Texas.
8–25–33					
PTX	4830	8063	Distillate	Eastern States Pet.	Houston, Texas.
"	4760	8060	"	Primrose Pet.	Little Rock, Ark.
HMTX	1020	8144	Fuel Oil	Ed Bateman	Jewett, Texas.
8–28–33					
PTX	4542	8044	Distillate	Eastern States Pet.	Houston, Texas.
"	4621	8050	"	"	Galveston, "
"	6507	10105	Fuel Oil	"	"
"	660	10252	"	"	"
ASIX	735	10203	"	"	"
PTX	4604	8052	Gasoline	Cooper Keller	Minneapolis, Minn.

[fol. 100] Report of Refined Products Shipments from Panama Refining Co., Kilgore, Texas.

8–29–33					
ASIX	691	10200	Fuel Oil	Eastern States Pet.	Galveston, Tex.
PTX	6121	8088	Gas Oil	Nat'l O. & G. Co.	Holly Spgs., Miss.
ASIX	180	8136	Kerosene	Altitude Pet. Co.	McFarland, Kan.
8–30–33					
PTX	4628	8052	Gas Oil	Primrose Refg.	Little Rock, Ark.
PTX	4584	8047	Distillate	Siniane Bros.	Colby, Wis.
GATX	27730	10074	Fuel Oil	Ed Bateman	Jewett, Texas.
PTX	4561	8044	Gasoline	Imperial Pet. Co.	Dupo, Ill.
GATX	5562	8004	Distillate	Eastern States Pet.	Houston, Texas.
Aug. 31, 1933.					
QTX	271	8090	Fuel Oil	Eastern States Pet.	Galveston, Tex.
GATX	23532	8087	Gasoline	Liberty Oil Co.	Dallas, Texas.
"	23684	8073	"	G. C. Patterson Co.	Dupo, Ill.
Added:					
August 26, 1933.					
PTX	4683	8083	Gasoline	Allied Oil Jobbers	Minneapolis, Minn.
GATX	23695	8078	Fuel Oil	Nat'l O. & G. Co.	Wiergate, Tex.

Southport Refinery, Kilgore, Texas.

Tops of Crude	July, 1933	49 Cars.
[fol. 101]		
	August, 1933	
Top Crude		49 Cars.
Refined Oil		1
Distillate		91
Crude Tops		31
		172 "

Report of Refined Products Shipments of Southport Refinery, Kilgore, Texas.

Aug. 1, 1933					
STCX	1514	10065	Top Crude	Cooper Keller	Winnipeg, Canada.
QTX	278	8219	"	do	
GATX	3174	8216	"	do	
QTX	8198	8184	"	do	
LDLX	1740	8035	"	Cooper Keller	Moose Jaw, Canada.
STCX	2271	10072	"	do	
August, 4, 1933					
GATX	27574	10100	"	Cooper Keller	Winnipeg, Can.

In addition to the above, from July 20, 1933, to August 31, 1933, inclusive, there were approximately 246 cars of Crude Tops, Distillate, and Tops of Crude, shipped under the name of the Southport Pet. Co. to Houston, Laredo, and Eagle Ford, Texas.

[fol. 102]

Canyon Refinery, Kilgore, Texas

July, 1933

Fuel Distillate	10
Gasoline	8
Topped Crude	7
Gas Oil	1
Kerosene	1
Fuel Oil	2
	—
	29 Cars

August, 1933

Top Crude	17
Fuel Oil	15
Gasoline	20
Gas Oil	8
Kerosene	3
Distillate	4
	—
	67 Cars.

[fol. 103]

Crude Oil and Reduced Crude Shipped by Canyon Refinery, Kilgore, Texas, from Gladewater, Texas, During July and August, 1933

	July, 1933	
Crude Oil		32 Cars.
	August, 1933	
Reduced Crude		5 Cars.

Crude Oil Shipped from Overton, Texas, by Canyon Refg. Co.

	July, 1933	
Crude Oil		20 Cars.

Report of Shipments of Refined Products of Canyon Refinery, Kilgore, Texas (From Records of I. & G. N. Freight Records, Kilgore)

July, 1, 1933					
ASIX	620	10110	Fuel Distillate	Memphis Refg. Co.	Memphis, Tenn.
July 2, 1933					
GATX	72640	8226	"	do	
ASIX	1595	8106	Distillate	do	

[fol. 104] Report of Shipments of Refined Products of Canyon Refinery, Kilgore, Texas

July 5, 1933					
SHPX	8547	8016	Fuel Distillate	Memphis Refg.	Memphis, Tenn.
ASIX	1600	8116	"	do	
LDLX	1147	8059	"	do	
ASIX	259	8000	"	do	
SHPX	8076	7999	"	do	
July 11, 1933					
CYCX	8720	8203	Gasoline	Apex Oil Co.	St. Louis, Mo.
PTX	4039	8011	"	do	
July 12, 1933					
CYCX	7527	8153	Distillate	Petroleum Prod., Inc.	Kansas City.
QTX	9104	7878	Top Crude	Deepwater Refgs.	Houston, Texas.
STCX	4030	7924	"	do	
GATX	20200	7899	"	do	
"	26020	7831	"	do	
July 13, 1933					
DWCX	72	8087	Top Crude	do	
July 15, 1933					
ASIX	707	9856	Top Crude	do	
SHPX	8042	8024	Gasoline	Apex Oil Co.	St. Louis, Mo.
"	8025	8144	"	do	
"	8693	7952	"	Primrose Pet. Co.	Memphis, Tenn.

[fol. 105]

Report of Refined Products and Crude from Canyon Refinery, Kilgore, Texas

7–18–32					
GATX	23127	Gasoline	7974	Nat'l O. & G. Co.	Clarksdale, Miss.
CYCX	118	"	7997	Primrose Pet. Co.	Little Rock, Ark.
7–20–33					
PTX	2160	Gas Oil	8093	W. R. Taylor Co.	Barth, Fla.
SHPX	8371	Fuel Dist.	8051	Natl. O. & G. Co.	Rochester, Minn.
7–22–33					
GAGX	13548	Kerosene	8075	L. O. Carter Co.	St. Louis, Mo.
7–28–33					
GATX	13256	Crude Tops	8097	Memphis Refg. Co.	Memphis, Tenn.
7–30–33					
GATX	27926	Fuel Oil	9988	Ed Bateman	Jewett, Texas.
TIDX	1003	"	9829	Oreda Corp.	Willington, Ill.
7–31–33					
SEAX	341	Gaso-	8076	Tank Cars Gas Inc.	Minneapolis, Minn.
8–1–33					
GATX	20661	Top Crude	8083	Memphis Refg.	Memphis, Tenn.
ASIX	533	"	10092	"	"

[fol. 106] Report of Refined Products and Crude from Canyon Refinery, Kilgore, Texas

8-3-33					
GATX	11019	" "	8225	Memphis Pet.	Memphis, Tenn.
PTX	4233	Fuel	8049	Town of Harley	Harley, Iowa.
8-4-33					
LDLX	246	Fuel Oil	7960	E. D. Bateman	Jewett, Texas.
8-5&6-33					
Over-PTX	2282	Gaso	8741	Geo. C. Peterson	Detroit, Mich.
ton PTX	3368	"	8256	Modern Refg.	Dupo, Ill.
" PTX	4650	"	8081	"	"
" CYCX	8681	"	8169	Tri City Ry Co.	Davenport, Ia.
" GATX	14445	Fuel Oil	8081	Orenda Corp.	Wilmington, Ill.
" "	828	"	8142	Interstate Corp.	Milwaukee, Wis.
" STCX	8039	"	8097	Nat'l O. & G. Co.	Hayward, Texas.
" GATX	13283	"	8183	"	"
8-7-33					
ASIX	854	Top Crude	10191	Davis & Co.	Houston, Texas.
GATX	25276	"	8154	"	"
"	72682	"	8228	"	"
GATX	23071	Gas Oil	8087	Nat'l O. & G. Co.	Tilot, Ark.
PTX	1147	Gasoline	8255	Auto Stations	Detroit, Mich.
8-9-33					
SHPX	8608?	Gasoline	8127?	G. C. Peterson	Fairdale, Ill.

[fol. 107]

STCX	9806	Fuel Oil	8068	Ed Bateman	Jewett, Texas.
8–10–33					
GATX	13162	Gas Oil	8082	Three Star O. Co.	Chicago, Ill.
PTX	1848	Gas Oil	8204	LaCrosse O. Co.	LaCrosse, Wis.
STCX	70800	"	8212	Primrose Pet. Co.	Little Rock, Ark.
"	9077	"	8260	North States P. Co.	LaCrosse, Wis.
SHPX	8714	Kerosene	8086	Eastern States Pet.	Houston, Texas.
CYCX	9872	Gasoline	8171	Primrose Pet.	Little Rock, Ark.
8–11–33					
GATX	23684	Gasoline	8073	Primrose Pet.	Little Rock, Ark.
8–12–33					
GATX	14495	Top Crude	8081	Eastern States Pet.	Galveston, Tex.
"	25541	"	8053	"	"
QTX	9893	"	8039	"	"
GATX	70215	"	8104	"	"
PTX	3502	"	8252	"	"
8–16–33					
CYCX	7849	Gasoline	8034	Nat'l O. & G. Co.	Indianapolis, Ind.
PTX	4555	Gas Oil	7937	"	Columbia, Miss.
8–15–33					
PTX	4668	Gasoline	8078	Tank Car Gas.	Minnesota, Minn.
GATX	14828	Kerosene	8075	Altitude Pet.	Cashen, Ind.

[fol. 108] Report of Refined Products and Crude from Canyon Refinery, Kilgore, Texas

8–16–33					
CHIX	10117	Fuel Oil	10180	Orenda Corp.	Wilmington, Ill.
ASIX	440	Gasoline	8187	Geo. Peterson	Watertown, Wis.
"	1689	"	8099	Cooper Keller	Minneapolis, Minn.
GATX	3375	Fuel Oil	8088	Ed Bateman	Jewett, Texas.
HMTX	1048	"	8210	"	"
8–17–33					
ASIX	1350	Gasoline	8188	Cooper Keller	Chariton, Iowa.
GATX	60016	Kerosene	5055	Taswell Sen.	So. Pekin, Ill.
"	25552	Gas Oil	8048	Nat'l O. & G. Co.	Mattson, Miss.
8–24–33					
ASIX	434	Gasoline	8135	Cooper Keller	Chariton, Iowa.
8–25–33					
SHPX	8714	Gasoline	8086	Cooper Keller	Minneapolis, Minn.
8–26–33					
GATX	23162	Gasoline	8082	Primrose Refg.	Anchorage, La.
8–28–33					
CYCX	8621	Distillate	8178	Eastern States Pet.	Houston, Texas.
NATX	1302	"	10056	"	"
PTX	4602	Gasoline	8050	G. C. Peterson	Dupo, Ill.
CYCX	8604	"	8175	Cooper Keller	Minneapolis, Minn.

[fol. 109]

"	8813	"	8199	Primrose Pet.	Anchorage, La.
GATX	25845	Fuel Oil	8016	Phoenix Refg.	Houston, Texas.
QTX	404	"	8039	"	"
PTX	2621	"	8258	"	"
QTX	9141	"	8050	Eastern States Pet.	Galveston, Texas.
PTX	3370	"	8245	"	"
8-29-33					
PTX	4042	Gas Oil	8052	Skelly Oil Co.	Des Moines, Ia.
8-31-33					
QTX	9425	Distillate	8153	Primrose Pet.	N. Little Rock, Ark
8-30-33					
SHPX	8847	Distillate	8028	U. S. Coast Guard Base	Pascagoula, Miss.
SWIX	681	Gasoline	8120	G. C. Peterson	Dupo, Ill.
Aug. 1, 1933					
SHPX	11352	Crude Tops	10068	Memphis Refg.	Memphis, Tenn.

Report of Crude Oil Shipped from Canyon Refinery, Kilgore, Texas (Overton, Texas)

July 1, 1933					
GATX	23407	Crude Oil	8087	T. T. Oil Co.	N. Y. City.

[fol. 110]

Shipments of Crude Oil from Canyon Refinery, Kilgore, Texas. (Gladewater, Texas.)

July 5, 1933					
SHPX	11624	Crude Oil	10214	W. E. Winship	Morrelo, La.
"	11543	"	10210	do	
"	11187	"	10294	"	
"	11481	"	10068	"	
"	11478	"	10070	"	
"	11278	"	10074	"	
July 4, 1933					
SHPX	11509	Crude Oil	11200	W. E. Winship	Morrelo, La.
"	10798	"	10231	do	
"	11113	"	10284	"	
"	11661	"	10208	"	
July 3, 1933					
SHPX	10258	"	10144	"	
"	11606	"	10217	"	
"	10135	"	10090	"	
"	11450	"	10081	"	
HMTX	7016	"	10054	"	
QTX	1809	"	10167	"	
"	1683	"	10163	"	
STCX	1374	"	10068	"	

[fol. 111]

SHPX	10127	"	10127	"
"	1980	"	10103	"
"	11134	"	10285	"
GATX	72589	"	8210	"
"	27630	"	10070	"
"	14923	"	8107	"
QTX	1804	"	10178	"
GATX	75527	"	10118	"
"	13583	"	8085	"

Locke Refinery, Gladewater, Texas

July

Gasoline	53	Cars
Gas Oil	17	"
Distillate	1	"
Crude Oil	33	"
	111	"

Locke Refinery, Gladewater, Texas—continued

[fol. 112]

August

Gasoline	50 Cars
Gas Oil	16 "
Distillate	12 "
Cracking Stock	1 "
	79 "

Crude Oil Loaded at Overton, Texas, Under Name of Locke Drilling Company, Inc.

July, 1933

Crude Oil	264 Cars.

Locke Refining Company, Gladewater, Texas

(Gas Oil)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack.
7-1	Goad Bros.	Hamburg, Ia.	CTAX	8095	8069	Locke	
	Acme Pet. Co.	Walnut, Ia.	GATX	26227	8075	"	Trinity
7-5	Geo. O. Peterson	Dupo, Ill.	GATX	5330	8093	"	"
7-6	Acme Pet. Co.	Kansas City, Mo.	SHPX	8616	8104	"	"
7-7	Pet. Products Inc.	Perry, Ia.	PTX	3749	8060	"	"

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7-8	Carbon Coal Co.	Highland Park, Iowa.	APTX	107	8092	Locke	Trinity
7-10	Swanson-Anderson,	Oakland, Neb.	CYCX	310	8091	“	“
“	Ressmeyer Oil Co.	Pipestone, Minn.	PTX	3399	8246	“	“#1
7-11	Union Gas Co.	Bloomington, Ill.	QTX	8004	8051	“	“#1
			GATX	18253	10036	“	“#1
“	Quality Oil Co.	Butler, Wis.	CYCX	8539	8097	“	“#1
			CTAX	8126	8171	“	
7-12	Modern Refinery,	Dupo, Ill.	CTAX	6989	8095	“	
“	Quality Oil Co.	Butler, Wis.	QTX	8217	8068	“	“
			SHPX	8681	8079	“	“
7-15	Allis Chalmers Mfg. Co.	West Allis, Wis.	PTX	4747	8083	“	“
“	Union Gas & Elec. Company.	Bloomingdale, Ill.	SHPX	10146	10097	“	
“	Quality Oil Co.	Butler, Wis.	CTAX	7008	8102	“	“
7-16	Porter Oil Co.	Venango, Neb.	APTX	101	8094	“	“
7-17	L. A. Black	Burk's Switch, Arkansas.	CTAX	8054	8069	“	Team
“	City of Perry.	Perry, Ia.	SHPX	8911	7988	“	Trinity

[fol. 114]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack.
8-9	Stevenson Coal Co.	Nebraska City, Neb.	CTAX	8053	8064	"	
			SIMX	9947	8148	"	
"	Cooper Keller Oil Company.	Flandreau, S. D.	CYCX	8961	8171	"	
"	Black Hawk Oil Corporation	Chicago, Ill.	GATX	15541	8105	"	
8-14	Modern Refg. Corp.	Dupo, Ill.	CYCX	963	8094	"	"
"	Merchant & Strahn,	Wayne, Neb.	QTX	8117	8095	"	
8-15	Modern Refinery	E. St. Louis, Mo.	SHPX	8305	8108	"	"
8-16	Clark Oil Co.	Manitowoc, Wis.	GATX	5962	10069	"	
8-17	Malleable Iron Ranger Co.	Beaver Dam, Wis.	QTX	8387	8087	"	"
8-18	Northland Oil Co.	Moorehead, Minn.	SHPX	8627	8092	"	"
8-21	Ft. Madison Gas Light Company.	Ft. Madison, Ia.	GATX	16920	10114	"	"
8-21	Central Illinois Public Service Co.	Hoopeston, Ill.	GATX	2866	8096	"	"
8-26	City of Albany	Albany, Mo.	GATX	5363	8084	"	"
8-28	City of Franklin	Franklin, Neb.	GATX	23901	8095	"	"

[fol. 115]

8-30	Wisconsin Public Service Corp.	Green Bay, Wis.	PTX	4311	8061	“	“
“	Municipal Light Plant.	Indianola, Ia.	SHPX	8890	8083	“	“

Distillate

7-3	Frank Stevens Co.	Eagle Lake, Tex.	CTAX	8132	8173	“	“ #1
8-18	Bell Oil & Gas Co.	St. Paul, Minn.	GATX	25573	8050	“	“
8-21	“ “ “	“ “ “	GATX	13354	8080	“	“
8-22	“ “ “	“ “ “	APTX	113	8095	“	“
8-23	H. S. England	Pawnee City, Neb.	GATX	5689	8131	“	“
8-26	Forrest City Mill and Electric Co.	Forrest City, Mo.	CYCX	8703	8191	“	“
“	Community Oil Co.	Villisca, Ia.	GATX	26541	8094	“	“
8-28	Petroleum Products Co.	Omaha, Neb.	GATX	2786	8170	“	“
			CYCX	8719	8205	“	“
8-28	Acme Pet. Co.	K. C., Mo.	PTX	2378	8257	Locke	Trinity
“	Petroleum Products						

[fol. 116]

Distillate—continued

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack.
	Co.	Omaha, Neb.	GATX	29531	8104	"	"
8-29	Western Pet. Co.	Omaha, Neb.	GATX	5505	8084	"	"
8-30	Acme Pet. Co.	K. C. Mo.	CTAX	8095	8069	"	"
		Cracking Stock					
8-29	Metropolitan Utilities Gas Plant.	Omaha, Neb.	PTX	8074	8093	"	"
		(Gasoline)					
7-1	Acme Pet. Co.	K. C., Mo.	GATX	25667	8097	"	
			GATX	6805	8082	"	
"	Bethany Oil Co.	Bethany, Mo.	PTX	1967	8259	"	Trinity
7-3	W. H. Barber & Co.	Starbuck, Minn.	SHPX	9128	8137	"	
"	"	Milnar, N. D.	GATX	15111	8704	"	
"	"	Lidgewood, N. D.	GATX	22347	8122	"	"
7-4	"	Windmer, N. D.	GATX	29683	8102	"	"
"	"	Brandon, Minn.	CTAX	8086	8067	"	"
"	"	Casselton, N. D.	GATX	29334	8104	"	"
7-6	Cooper Keller Oil Co.	Minneapolis, Minn.	GATX	5207	8096	"	"
"	Home Oil Co.	Mt. Vernon, Mo.	GATX	5201	8096	"	"

[fol. 117]

7-7	Cooper Keller Oil Co.	Minneapolis, Minn.	GATX	6098	8125	"	"
	"	"	GATX	20540	8145	"	"
7-8	"	"	GATX	5687	8128	"	"
"	"	"	GATX	6348	8117	"	"
7-10	J. W. Norris & Son.	Grinnell, Ia.	GATX	5404	8086	"	"# 1
"	Home Oil Co.	Ridgeway, Mo.	GATX	5689	8131	"	"# 1
7-11	Transportation Oil Co.	Milwaukee, Wis.	GATX	6614	8088	"	"
"	Ozee and Hayes	Mattoon, Ill.	GATX	6031	8091	"	"
7-12	Ida Grove Oil Co.	Ida Grove, Ia.	CTAX	6899	8097	"	"# 1
"	Muff Grain & Coal Company.	Liberty, Ind.	SIMX	9948	8159	"	"# 1
"	O. A. Cooper Co.	Humboldt, Neb.	GATX	22333	8120	"	"
"	Farmers Corp. Oil Co.	Shelton, Ia.	APTX	109	8082	"	"
"	Harry See	Waterloo, Ia.	GATX	5299	8098	"	"
"	Acme Pet. Co.	Winterset, Ia.	STCX	9155	8056	"	"
	Notify Winterset Oil Co.						
7-15	W. H. Barber & Co.	Minneapolis, Minn.	SIMX	9957	8152	"	"
"	Simmer Oil Co.	Ottumwa, Ia.	CTAX	8098	8067	"	"
7-16	M. St. L. Railway Co., Care Storekeeper Grisley.	Morning Sun, Ia.	SHPX	8740	8130	"	"
			CTAX	8108	8167	"	"

[fol. 118]

(Gasoline)—continued

7-17	Cooper-Keller Oil		PTX	1647	8248	"	"
"	Locke Refinery, Io.	Minneapolis, Minn.	SHPX	8614	8138	"	"
	Changed before m.	K. C., Mo.					
	ment to Cooper Ke-						
	Oil Co. ler						
"	Locke Refinery	Minneapolis, Minn.	SHPX	8579	8080	"	"
	Keller Oil Co.	K. C., Mo.					
7-17	Locke Refinery, I	Minneapolis, Minn.	PTX	2343	8258	Locke	Trinity
	Changed to Coop.	K. C., Mo.					
	Keller Oil Co.						
"	Cooper Keller Oil	Minneapolis.	SHPX	8604	8153	"	
8-9	Big Heart Oil Co.	Minneapolis, Minn.	SHPX	9172	8149	"	
"	McCarthy Oil, Ca	Kewanee, Ill.					
	Viking Oil Co. e		QTX	8983	8133	"	
"	Emory Clark, Ca	Milwaukee, Wis.					
	Rhode Duster Oil						
	Company.	" "	CYCX	4118	8166	"	
			PTX	2202	8093	"	
8-11	West Central Gas		PTX	1647	8248	"	Trinity
	o.	Louisburg, Minn.					

[fol. 119]

8-11	Beaver Dam Oil C	Beaver Dam, Wis.	PTX	2343	8258	"	
8-12	Johnson & Hill .,	Wisconsin Rapids, Wisconsin	GATX	29480	8106	"	"
"	McCarthy Oil Co Care Viking Oil C	Milwaukee, Wis.	PTX	4539	8047	"	"
8-13	Central Pet. Co. .,	Peru, Ind.	GATX	29483	8102	"	"
"	Home Oil Co.	Ridgeway, Mo.	CYCX	9231	8170	"	
8-14	Geo. C. Peterson (o.,	Dupo, Ill.	SIMX	1613	10217	"	"
			GATX	6509	8079	"	"
"	G "	Ellsworth, Wis.	GATX	29334	8104	"	
"	"	Casco, Wis.	STCX	8006	8092	"	
8-16	West Central Gas	Louisburg, Minn.	GATX	6580	8088	"	"
8-17	Cooper Keller Oil Co. Company	Minneapolis, Minn.	CTAX	7003	8101	"	"
			GATX	29396	8104	"	"
			SHPX	8580	8085	"	"
8-18	Sanes Pet. Co.	Kirksville, Mo.	GATX	2848	8094	"	"
			GATX	2852	8097	"	"
8-19	Peoples Oil Co.	Ft. Dodge, Ia.	STCX	8794	8094	"	"#1
"	Cooper Keller Oil Company,	Minneapolis, Minn.	GATX	29769	8121	"	"

[fol. 120]

(Gasoline)—continued

[fol. 120]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8-19	Geo. O. Peterson and Company,	Dupo, Ill.	GATX	13998	8084	"	" #1
8-21	American Pet. Co.	Chicago, Ill.	GATX	5885	10065	"	"
			GATX	14605	8051	"	"
			GATX	5712	8125	"	"
"	Monarch Service Station,	Bay City, Mich.	GATX	5916	10069	"	"
8-22	Emory Clark Co. Care Rhode Deuster Oil Company,	Milwaukee, Wis.	SIMX	1605	10212	"	"
			PTX	4125	8064	"	"
8-24	Cooper Keller Oil Co.	Minneapolis, Minn.	GATX	29399	8108	"	"
			GATX	29496	8107	"	"
8-25	"	"	IMRX	1117	8086	"	"
			IMRX	1183	8083	"	"
8-26	Apex Oil Co.	Afton, Okla.	CYCX	8738	8202	Locke	Trinity
"	"	St. Louis, Mo.	SHPX	9157	8144	"	"
			SHPX	9151	8140	"	"
"	"	"	GATX	23972	8133	"	"

[fol. 121]

(Gasoline)—continued

7—135

	Destination changed to Afton, Okla.						
8-26	Freeze Bros. Oil Co.	Waterloo, Ia.	GATX	25446	8064	"	"
8-28	Apex Oil Co.	Little Rock, Ark.	PTX	1863	8093	"	"
			CYCX	7901	8107	"	"
"	West Central Gas Co.	Louisburg, Minn.	CYCX	902	8055	"	"
"	Geo. C. Peterson Co.	Dupo, Ill.	GATX	11821	8137	"	"
			GATX	29582	8105	"	"
8-29	Globe and Refg. Company, Care National Pet. Co.	Central Park and Grand Ave., Chicago.	STCX	8684	8095	"	"
			GATX	29462	8108	"	"
8-30	Fulton Coal Co.	Chicago, Ill.	CYCX	8699	8168	"	"
"	Globe Oil & Ref. Co. Care National Pet. Co.	Englewood, Ill.	QTX	8722	8119	"	"
"	West Central Gas Co.	Louisburg, Minn.	GATX	29517	8107	"	"
8-31	Monarch Service Station	Saginaw, Mich.	GATX	6135	8085	"	"

[fol. 122] In addition to the facts he stated above, J. G. Floyd, together with Joe Dupree, stated that during their employment with the Railroad Commission of Texas they became familiar with the more persistent violators of the State Proration Laws; that to their actual knowledge many local refineries in the East Texas Oil Field are tied directly to producing wells, either through by-passes or through illegal connection; that the following enumerated refineries, situated in the East Texas Oil Field, are tied directly to producing properties; and, that in order to check the producing properties, it is necessary also to check the refineries to determine the exact amount of oil being illegally produced above the allowable set by the regulatory body of the State.

Foshee Refinery

Connected to: Iron Rock Oil Co. Block 44. The allowable for this well for the two months was 3872.5 barrels.

A. B. Foshee, Block 36. Allowable was 3710.5 barrels.

Reynolds and Manziel, Block 30. Had a by-pass connection to this refinery and a pipe line connection to some other company. The allowable is not listed in the schedule at Gladewater.

Joe Manziel, Thompson Block 13 has a by pass connection to this refinery and a pipe line connection to some other company. The allowable was 3197.0 barrels.

Burnett & Foshee, Jim Bell lease had a pipe line connection and a by-pass connection to this refinery. The allowable was 2903 barrels.

Locke Refinery

Connected to: Rinehart pipe line system, (See note on this and other pipe lines.)

P. & G. Production Co., Sam Kay lease. This connection was a by-pass. This well was also connected to the 55,000 [fol. 123] barrel tank on Tenery farm. Also connected to Rinehart's system.

McCormick and Bates (Now United East & West) Sam Kay lease. This connection was a by-pass connection and had a different pipe line connection. Allowable was 4405.0 barrels.

Southern Oil & Refining Co. Pipe Line L. M. Harris, Demoss lease, by-pass. Allowable was 3876.5 barrels.

J. C. Harris, Block 17. By-pass connection. The allowable was 3621.5 barrels.

L. M. Harris, Victory lease, by-pass. The allowable was not listed.

55000 barrel tank on the Tenery farm.

C. Lyons Oil Co. (James N. Burns) Whittle lease. Pipe line connection. Allowable was 3739 barrels.

DeWitt and Travis, Bray lease. By-pass. Allowable was 1852 barrels, but not listed after August 7.

Carnation Refinery

Connected to: L. M. Harris, DeMoss lease. Allowable was 3876.5 barrels. The connection was a by-pass connection and pipe line connection.

J. C. Harris, Block 17. Same connections as above lease and the allowable was 3614 barrels.

L. M. Harris, Victory lease. Had a by-pass connection and also pipe line connection. Allowable is not listed.

T. A. Johnson, Block 35. Had a by-pass connection to this refinery. Was only connected three or four days before it was taken out. Caught July 17. The allowable at that time was 61.5 barrels per day.

DeWitt & Travis, Bray lease. Had a pipe line connection leading to this refinery. Also a by-pass connection for a [fol. 124] short time. The allowable was 1852.5 barrels up to August 7th, not listed since then.

Upshur Refinery

Connected to: P. B. Goodwin, Ida Johnson lease. Pipe Line connection. Allowable was 7980 barrels.

Jno. F. O'Connell, Richey lease. Pipe line connection. Allowable was 3853.5 barrels.

Receives quite a lot of truck oil.

Big Sandy Oil & Refining Co.

Lake Refinery

Connected to: Rinehart Pipe Line system. Sabine water system.

Marfinwood Oil Co., Nannie E. Walker lease. By-pass connection. Allowable was 3324 barrels.

Big Ten Oil Co., Block 10. This well was brought in and started to produce about August 10 and the allowable is not listed. Have tanks on the Refinery property.

Chas. Trigger, Wood lease. Pipe line connection and by-pass connection. Allowable 3765 (Up to Aug. 7).

Kimberlin and Reynolds, Perry Est. Block 11. Pipe line connection. Allowable 3215.5 barrels.

Connected to a pipe line owned by the Lake Refinery.

Explanation of the Rinehart Pipe Line System

The Rinehart Pipe Line System is a net-work of lines laid by A. J. Rinehart, and was supplying refineries with oil. Wells were flowed directly into the refineries or to the 55000 barrel tank on the Tenery Farm through this line. That 55000 barrel tank is now owned by the Tex-La Pipe Line Company, and it is connected with the 55000 barrel tank near the "Gladewater Fortress." The Southern Oil & Refining Co. has a pipe line connected to the tank close to the Fortress and the line leads to Kilgore and other [fol. 125] districts. The Southern Oil & Refining Company is also using the old Sabine water system as a gathering system and all the above lines and tanks are now connected together. The Rinehart system is also connected to the Longview Gathering System (Danciger) that leads to the Danciger Refinery at Longview.

Rinehart's pipe line is connected to the Locke Refinery, an- can go to the Carnation Refinery through the Locke Refinery Line. It winds through Gladewater to the Cook refinery, Trinity, Lake, Supreme, Godlin (Old H. & M.) and to Jacks Refinery.

Following is a list of wells which could flow directly to the complainants' refineries. These wells were found flowing as of the dates indicated and were flowing into lines whereby the oil could be switched to more than one refinery, as indicated.

April 23, 1933.—Rinehart Pipe Line System and could go to the Locke, Carnation, Lake, Cook, Trinity, and Gregg Refineries.

May 3, 1933.—J. F. O'Connell—Richey lease—By-pass to Lake or Trinity Refinery.

May 5, 1933.—P. & G. Production Co.—Kay lease—to Rinehart Pipe Line System and can go to Locke, Carnation, Cook, Lake, Trinity, Supreme, Gregg, and Godlin's Refineries.

May 11, 1933.—A. B. Foshee—Block 36 & 44—By-pass to the Foshee Refinery.

May 13, 1933.—Marfinwood Oil Co.—Walker lease—By-pass to the Rinehart Pipe Line System and could go to the Lake, Trinity, Supreme, Jacks, Godlins, Locke and Carnation Refineries.

May 22, 1933.—Burnett & Foshee, Bell lease—by-passing to the Foshee Refinery.

May 25, 1933.—Welch, Locke & Holloway, Whittle lease, by-pass to Locke Refinery.

May & June, 1933.—Dr. E. L. Walker, Walker lease—by-passing to the Lake, Trinity, Supreme, Godlin, or the Jacks Ref.

[fol. 126] May, 1933.—L. M. Harris, DeMoss lease—by-pass to Rinehart System, Locke, Carnation, Texas Oil Products, Lake, Trinity.

May, 1933.—Pelphrey Bros., Halley lease by-passing to the Carnation and Trinity.

June, 1933.—L. M. Harris, Victory lease, by-pass to Carnation, Locke Refineries.

July 17, 1933.—T. A. Johnson, Victory lease—bypass to Carnation Refg.

July 20, 1933.—Bobby Manziel, Block 30—by-pass to the Foshee Rfg.

The following is a list of wells and leases which were found flowing directly into refineries between the dates of May 1st and September 15, 1933. All over-production from these properties went directly to local refineries.

Date	Operator	Lease	Kind of violation	Destination of oil
May 4.	J. F. O'Connell	Richey	By-passing	Lake or Trinity
May 5.	Sam Roosth	Block 63	"	Lake or Trinity
May 7.	Sam Roosth	Block 63	"	Lake or Trinity
May 8.	J. F. O'Connell	Richey	"	Lake or Trinity
May 8.	Sam Roosth	Block 63	"	Lake or Trinity
May 11.	A. B. Foshee	Block 36	"	Foshee Refinery
May 12.	Marfinwood Oil Co.	Walker	"	Lake or Trinity
May 12.	A. B. Foshee	Block 36 & 44	"	Foshee Refinery
May 13.	Marfinwood	Walker	"	Lake or Trinity
May 17.	Burnett & Foshee	Bell	"	Foshee Refinery
May 19.	A. B. Foshee	Block 36 & 44	"	Foshee Refinery
May 19.	Marfinwood	Walker	"	Lake or Trinity
May 20.	Burnett and Foshee	Bell	"	Foshee Refinery
May 20.	Marfinwood	Walker	"	Lake or Trinity
May 22.	"	"	"	" " "
May 23.	Burnett and Foshee	Bell	"	Foshee Refinery
May 23.	A. B. Foshee	Block 44	"	Foshee Refinery
August 14.	A. B. Foshee	Block 36	"	Foshee Refinery

[fol. 127] In addition to the facts he stated above, J. N. Inglish also stated that in the course of the performance of his official duties, he has secured information as to the available crude storage of the Panama and Southport Refineries, which is as follows:

Panama:

10,000
5,000
3,000
1,500
1,000
1,000—Last contained fuel oil, but could be for crude.
1,000—Last contained gas oil, but could be for crude.
1,000—Last contained Kerosene, but could be for crude.

23,500—Total at Refinery premises.

10,000—This tank located at Republic Christian lease.
10,000—This tank located at Republic Christian lease.

43,500—Total.

Note.—The two ten thousand barrel tanks are tied into the Tom Potter line leading to the Panama. There has just been installations made on a pump at Reed's Switch to move this oil.

Southport:

1,000
1,000
1,250
1,250
5,000

9,500—Total at Southport Refinery location.

Both of these refineries have lease storage on their production properties.

In addition to the facts he stated above, H. E. Tyson also stated that, based upon actual observation and from months of experience with the Railroad Commission of [fol. 128] Texas and in the Department of the Interior as an investigator in the East Texas Oil Field, it is a fact that the extent and character of pipe lines serving the East Texas field makes it an impossibility to check over-producing properties from a check of the pipe lines. He further stated the following in support of the opinion:

(a) Gauging of pipe line storage facilities will not show the actual amount of oil being produced from a field where certain operators and producers are delivering a part or all of their oil to local refineries and loading racks.

(b) A producer may produce and run from a lease its daily allowable production to a pipe line where the oil or its equivalent could be checked, provided however, the said pipe line company keeps an adequate set of books or records, but, at the same time such producer may be using a by-pass connected to lines of a local refinery or loading rack and at the same time be delivering oil to such refinery or loading rack.

(c) The mere gauging of the storage facilities of pipe lines, refineries, treating plants and loading racks will not disclose the actual amount of oil produced from a given lease where such pipe lines, refineries, treating plants and loading racks are receiving oil from various leases and sources at the same time.

(d) Gauging of pipe line storage facilities will not show the actual amount of oil produced from day to day by producers.

(e) A producer may deliver the allowable oil production from a lease to a pipe line, and at the same time be delivering to a large storage tank located at some other point, the oil to be placed on the market at a latter date.

(f) Due to the large number of pipe lines and so-called [fol. 129] gathering systems in the East Texas Oil Field, it is impossible to tell what the producer is producing because the many gathering systems can deliver the oil into various trunk lines, loading racks, and to refineries. The oil can go through so many channels that it loses its identity and positively cannot be traced back to its origin.

The Defendants introduced in evidence a statement by Walter S. Behrens, who stated that he has been employed by the Department of the Interior of the United States as an Oil Investigation Agent since September, 1933; that during the military occupation in the East Texas Oil Field, when the field was under Martial Law under proclamation of the Governor of Texas, he was a Lieutenant in the 124th Cavalry; that at that time he became familiar with the conditions in the field and had occasion to make investigations with reference to over-production of oil and the running of oil to tank farms and to local refineries; that his observations then and now are that the small refineries or skimming plants situated in the East Texas Oil Field are the outlets for the major portion of the oil produced in violation of the Proration Laws or what is commonly known as "hot oil;" that during September and October, 1933, he had been engaged in making investigation which showed that refineries disposed of excess oil both before and after July 11, 1933; that these refineries existed and now exist merely for the purpose of disposing of crude oil; that the following listed data was secured by him from the records of the Railroad offices, situated in the East Texas Oil Field and indicate that refineries shipped enormous amounts of crude oil both before and after July 11th and that the products from these refineries listed entered into the stream of interstate commerce.

[fol. 130]

Foshee Refinery

July, 1933

Gasoline	32 Cars
Fuel Oil	4
Distillate	2
Gas Oil	1
	39 Cars.

August, 1933

Gasoline	3

In addition, the following is the amount of crude oil shipped out over this rack during July. No crude was shipped in August. This rack is the property of the Foshee Refinery and no other refinery is located on this rack.

Date 1933	Consignor	Consignee	Destination	# Cars
July 6	Wade Johnson	B. T. McNeil	Westwego, La.	11
" 9	Frank Havell	Calumet Pet. Co.	Calumet, La.	11

[fol. 131]

Date	Consignor	Consignee	Destination	#Cars
" 11	G. W. Simpson	B. T. McNeil	Westwego, La.	11
" 12	R. S. Alexander	M. B. Blake	"	12
" 14	Trinity Refg. Co.	Phoenix Refg.	Eagle Ford, Tex.	20
" 13	Alex R. Shoozer	M. B. Blake	Westwego, La.	9
" 13	A. R. Wood	do		11
" 12	R. S. Alexander	Sterling O & R Co.	Moose Jaw, Sask.	11
" 13	"	M. B. Blake	Westwego, La.	12
				108

B. T. McNeil is an oil broker with headquarters in Houston, Texas. Witness Behrens made a diligent effort to locate and learn the identity of Mr. Wade Johnson, Frank Havell, G. W. Simpson, R. S. Alexander, Alex. R. Shoozer, and A. R. Woods, listed above, and these are evidently fictitious.

Oil received by truck: None.

Foshee Refining Company

(Gasoline)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7-1	Oakley Gas & Oil Co.	Nashville, Tenn.	STCX	9683	8100	Foshee	Fos. #2
7-1	" " " "	"	STCX	9648	8097	"	" #2
7-2	Wilson Oil Products Co.	Mankato, Minn.	PTX	2768	8260	"	" #2
7-3	Hoosier Pet. Co.	Indianapolis, Ind.	GATX	29547	8106	"	

[fol. 132]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7-3	T. J. Ryan	St. Louis, Mo.	PTX	4037	8058	"	
7-3	"	"	PTX	4712	8078	"	
7-4	Peoples Nu-Gas Co.	Cambridge City, Ind.	QTX	8316	8064	"	"
7-4	Hoosier Pet. Co.	Indianapolis, Ind.	SHPX	8713	8094	"	"
7-5	Wilson Oil Products Co.	Deer River, Minn.	STCX	9421	8073	"	
7-5	"	St. James, Minn.	GATX	25520	8048	"	
7-7	"	Sibley, Ia.	SHPX	8604	8153	"	"
7-7	Geo. C. Peterson	Dupo, Ill.	GATX	29462	8108	Foshee	Fos. #2
7-7	Wilson Oil Products Co.	Lake Crystal, Minn.	GATX	29356	8105	"	"
7-10	Northland Oil Co.	Stewardville, "	GATX	13565	8085	"	"
7-11	O'Day Oil Co.	Ft. Wayne, Ind.	CYCX	9231	8170	"	" #2
7-11	"	"	GATX	29636	8102	"	" #2
7-11	"	Ossian, Ind.	SHPX	8706	8111	"	" #2
7-11	Wilson Oil Products Co.	Staples, Minn.	GATX	23361	8117	"	" #1
7-11	"	Conde, S. D.	GATX	29463	8108	"	" #1
7-12	"	Elmore, Minn.	SHPX	8615	8124	"	"

(From Texas Oil Products
(Company, Gladewater.

[fol. 133]

[fol. 133]

7-14	O'Day Oil Co.	Auburn, Ind.	PTX	1546	8250	"	"
7-14	Texas Oil Products Co.	K. C., Mo.	CTAX	6971	8135	"	"
7-14	" " "	" " "	SHPX	5000	10212	"	"
7-16	" " "	" " "	GATX	29569	8102	"	"
7-16	Diverted to Wilson Oil Products Co.	Willmar, Minn. By T. O. P. Co., Gladewater					
7-17	Texas Oil Products Co.	K. C., Mo.	SHPX	8506	8059	"	"
	Diverted to Wilson Oil Products Company, Worthington, Minn. by T. O. P. Co.						
7-17	Texas Oil Products Co.	K. C., Mo.	GATX	15541	8105	"	"
	Diverted to American Pet. Co., Allendale, Minn. by T. O. P. Co.						
7-17	Texas Oil Products Co.	K. C., Mo.	GATX	3143	8213	"	"
	Diverted to Wilson Oil Products Company, Melrose, Minn. by T. O. P. Co.						
7-18	Texas Oil Products Co.	K. C., Mo.	SHPX	9158	8149	Foshee	Foshee
	Changed to Wilson Oil Products Co. 7-25-33, Worthington, Minn. and the shipper was Texas Oil Products Company, Gladewater.						
7-18	Texas Oil Products Co.	K. C., Mo.	GATX	6027	8079	Foshee	
	Changed 7-27-33 to San Burn Oil Co., Care Osburn Refining Co., Osburn, Ind. from Texas Oil Products Co., Gladewater.						
7-19	Modern Refy. Corp.	K. C., Mo.	GATX	2792	8165	Foshee	
	Changed 7-25-33 to Altitude Pet. Co., Fargo, N. D., this bill of lading in lieu of bill of lading covering same car as of July 17th.						

[fol. 134]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy	Shipper	Rack
7-19	Texas Oil Products Co.	Little Rock, Ark.	CTAX	6898	8099	Foshee	
	Changed 7-21-33 to Altitude Pet. Co., Chicago, Ill. Shipper Texas Oil Products Company, Gladewater.						
7-19	Texas Oil Products Co.	Little Rock, Ark.	GATX	14026	8106	"	
	Changed 7-27-33 to G. H. Hammond, Union Stock Yards, Chicago, Shipper Texas Oil Products Co., Gladewater.						
8-18	Gulf Production Co. Care E. Iles.	Overton, Texas	QTX	8722	8119	Foshee	
8-19	Gaither Oil Co.	Ft. Worth, Tex.	GATX	22295	8120	"	Fos. #2
8-26	Century Oil Co.	"	CYCX	8720	8202	"	"
		(Fuel Oil)					
7-1	MK&T Co.	Denison, Texas.	SHPX	8422	8042	Foshee	Fos. #2
7-1	"	"	SHPX	8424	8046	"	" #2
7-1	"	"	SHPX	10244	10142	"	" #2
7-8	Midland Coal Co.	Honey Grove, Tex.	SHPX	10687	10137	"	"

[fol. 135]

(Distillate)

7-1	Northland Oil Co.	Dupo, Ill.	GATX	13068	8075	"	" #2
7-5	Home Oil Co.	Red Wing, Minn.	CTAX	6917	8095	"	

(Gas Oil)

7-18	Texas Oil Products Co.	Little Rock, Ark.	ISTX	412	8109	"	"

Changed to Petroleum Products, Inc., Higginsville, Mo., Texas Oil Products Company, Gladewater on July 21st. Issued in exchange original B/1. dated Gladewater, July 18th.

Carnation Refinery, Gladewater, Texas

July

Gasoline	22	Cars
Gas Oil	4	"
Kerosene	2	"
Distillate	4	"
Tractor Fuel	1	"
	33	"

[fol. 136]

August

Gasoline	10 Cars
Gas Oil	4 "
Kerosene	5 "
Distillate	1 "
Fuel Oil	3 "
	23 "

(Gas Oil)

Date	Consigned to	Destination	Initl.	Car. Nos.	Capy.	Shipper	Rack
7-12	Modern Refy. Corpn.	Dupo, Ill.	SHPX	8959	7981	Carnation	Ty.
7-17	Modern Refy. Corpn.	Jackson, Miss.	GATX	29502	8104	"	
7-21	M. B. Chatfield	Celina, Texas	CTAX	8152	8170	"	"
8-18	National Oil & Grease Co.	Marshall, Ark.	CATX	8082	8064	Primrose	
8-22	Saunders Pet. Co.	Howarden, Ia.	SHPX	8425	8055	Carnation	"
8-25	National Oil & Grease Co.	Oxford, Miss.	SHPX	11633	10217	"	"
8-31	Primrose Pet. Co.	N. Little Rock	SHPX	10110	10063	"	

[fol. 137]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
		(Kerosene)					
7–17	Altitude Pet. Co.	K. C. Mo.	GATX	29322	8106	Carnation	
7–20	Modern Refy. Corp.	" "	GATX	13514	8087	"	Ty.
8–12	" " "	E. St. Louis, Ill.	STCX	8708	8100	"	"
8–15	" " "	" "	IMRX	1185	8083	"	"
8–18	" " "	Lebanon, Tenn.	CYCX	111	8083	"	"
8–21	" " "	E. St. Louis, Ill.	GATX	2781	8167	"	"
8–31	Pet. Import & Export Corp.	St. Rosa, La.	GATX	15052	8106	"	"
		(Distillate)					
7–12	Western Pet. Co.	Omaha, Neb.	HTCX	1042	8082	"	
7–17	Barron Oil Co.	Shenandoah, Ia.	SHPX	8684	8059	"	
7–23	Modern Refy. Corp.	Dupo, Ill.	IMRX	1180	8086	"	
7–29	Cooper Keller Oil Co.	Rice Lake, Wis.	QTX	8316	8064	"	
8–20	Primrose Pet. Co.	N. Little Rock	GATX	5469	8087	"	"
		(Gasoline)					
7– 1	Modern Refy. Corp.	Ossian, Ind.	PTX	2000	8250	"	"
7– 1	American Pet. Co.	Carroll, Ia.	SHPX	8468	8229	"	"
7– 1	"	Oskaloosa, Ia.	GATX	15541	8106	"	"
7– 5	Modern Refy. Corp.	Dupo, Ill.	PTX	4061	8002	"	"
7– 5	" " "	" "	CTAX	8094	8067	"	"

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7- 7	City of Dallas	Dallas, Texas.	SIMX	1223	10070	"	"
7- 8	Texas Oil Products Co.	Wilmar, Minn.	GATX	29309	8108	"	"
7-11	T. J. Ryan	St. Louis, Mo.	SIMX	1613	10227	"	"
7-11	" "	" "	GATX	6439	8120	"	"
7-11	Penn-Bright Oil Co.	Chicago, Ill.	SIMX	1032	10070	"	"
7-12	Cooper Keller Oil Co.	Wilson, Minn.	PTX	6134	8095	"	
7-14	Gaither Oil Co.	Ft. Worth, Tex.	PTX	4670	8081	"	"
7-17	Oakley Gas & Oil Station	Atlanta, Ga.	HTCX	1110	8069	"	
7-17	American Pet. Co.	Evansville, Ind.	HTCX	1147	8086	"	"
7-19	Cooper Keller Oil Co.	Rice Lake, Wis.	APTX	108	8084	"	"
7-21	Red Ace Pet. Co.	Nashville, Tenn.	GATX	25558	8059	"	"
7-21	Modern Refy. Corp.	Dupo, Ill.	HTCX	1017	8080	"	"
7-21	" " "	" "	HTCX	1006	8087	"	"
7-21	***" " "	" "	SHPX	8727	8028	"	"
7-25	C. R. Kline, % Charlie Macklen,	Gravois Switch, Gravois, Mo.	GATX	15551	8018	"	
7-29	Cooper Keller Oil Co.	Wilson, Minn.	GATX	26589	8096	"	"
8-11	" " " "	" "	PTX	4712	8078	"	
8-12	Modern Refy. Corp.	E. St. Louis, Ill.	PTX	3459	8252	"	"

[fol. 139]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8–21	Cooper Keller Oil Co.	Wilson, Minn.	GATX	6411	8127	"	
8–21	" " " "	Minneapolis, Minn.	SIMX	9932	8152	"	"
8–21	" " " "	" "	CYCX	8517	8083	"	"
8–24	" " " "	" "	PTX	1546	8250	"	"
8–24	" " " "	" "	PTX	4061	8051	"	"
8–28	" " " "	" "	SHPX	11373	10074	"	"
8–29	T. J. Vogel Oil Co.	Omaha, Neb.	GATX	13190	8085	"	"
8–31	Cooper Keller Oil Co.	Minneapolis, Minn.	CTAX	8124	8165	"	"
***			GATX	29520	8104	"	"
7–21	Red Ace Pet. Co.	Paris, Tenn.	HTCX	1005	8110	"	"
		(Tractor Fuel)					
7–29	Penn-O-Tex Oil Co.	Sidney, Neb.	HTCX	1032	8070	Carnation Ty.	
		(Fuel Oil)					
8–21	Collin County Mill & Elev. Co.	McKinney, Tex.	SHPX	8876	8014	"	"
8–26	do	" "	SHPX	8992	7982	"	"
8–26	Farmers & Merchants Compress & Whse. Co.	Sulphur Spgs. Tex.	SHPX	9095	8155	"	"

[fol. 140]

Lake Refining Co., Gladewater, Texas

July, 1933

Gas Oil	17
Kerosene	2
	19 Cars

August, 1933

Gas Oil	1
Top Crude	1
	2 Cars.

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7– 1	L. A. Black	DeWitt, Ark.	SHPX	8136	8072	Gas Oil Lake	
7– 2	L. A. Black	DeWitt, Ark.		7627	7611	“ “ “	
7– 3	L. A. Black	DeWitt, Ark.	CTAX	8105	8167	“ “ “	
7– 3	L. A. Black	Gillette, Ark.	GATX	29858	8119	“ “ “	Team
7– 6	L. A. Black	DeWitt, Ark.	PTX	2561	8258	“ “ “	“
7– 7	Blue Seal Oil Co.	Carlisle, Ark.	SHPX	9183	8138	“ “ “	“

[fol. 141]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7– 8	L. A. Black	DeWitt, Ark.	WRDX	64	8049	“ “	“ “
7–10	L. A. Black	Yoder, Ark.	CTAX	7000	8111	“ “	“
7–11	L. A. Black	DeWitt, Ark.	HECX	1012	10162	“ “	“
7–11	L. A. Black	DeWitt, Ark.	STCX	1330	10097	“ “	“ “
7–12	L. A. Black	DeWitt, Ark.	ISTX	232	8008	“ “	“
7–14	L. A. Black	DeWitt, Ark.	SHPX	2402	10040	“ “	“
7–16	L. A. Black	Gillette, Ark.	CTAX	8090	8064	“ “	“ “
7–17	L. A. Black	DeWitt, Ark.		2085	8067	“ “	“ “
7–18	L. A. Black	DeWitt, Ark.	STCX	8320	8050	“ “	“ “
7–19	L. A. Black	DeWitt, Ark.	GATX	1892	8181	“ “	“ “
7–21	L. A. Black	DeWitt, Ark.	SHPX	8464	8234	“ “	“ “
8– 8	Star Refg. Co.	Ft. Worth, Tex.	SHPX	9137	8140	“ “	“ “
8– 9	Radio Pet. Co.	Teague, Tex.	KTX	8043	8043	“ “	“ “
8–25	City of Crete	Crete, Neb.		215	8052	“ “	“ “
7–14	Blue Seal Oil Co.	DeWitt, Ark.	CYCX	9171	8173	Kerosene	“ “
7–21	Withers and Wellford, Inc.	Memphis, Tenn.	GATX	29351	8102	“	“ “
8– 9	Star Refg. Co.	Ft. Worth, Tex.	SHPX	1027	10024	Reduced Crude for further refining.	“
8–26	Apex Oil Co.	Granite City, Ill.	GATX	2830	8097	Gasoline Lake Ty.	

[fol. 142]

Upshur Refining Co., Gladewater, Texas

July, 1933

Gasoline	2
Distillate	2
Gas Oil	1
	5 Cars.

August, 1933

Fuel Oil	2
Gas Oil	4
Cracking Stock	1
Petroleum Oil	1
	8 Cars.

(Distillate)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–12	Ark.-La. Pet. Co. Notify Ark-La. Pet. Co., Stuttgart, Ark.	Gillette, Ark.	ISTX	504	8106	Upshur	Team

[fol. 143]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–17	Ark-La. Pet. Co.	Carlisle, Ark.	CTAX	7004	8111	"	"
		(Gas Oil)					
7–17	Farmers Co-Operative Gin Co.	Celina, Tex.	CTAX	8084	8087	"	"
7–25	North Texas Gin Co.	Prosper, Tex.	SHPX	8549	8014	"	"
7–26	Standard Tilton Milling Co.	Dallas, Texas.	WRDX	61	8050	"	"
8– 4	Chief Refg. Co.	Stuttgart, Ark.	SHPX	7627	7611	"	"
	From Chief Refg. Co.						
8–19*	Primrose Pet. Co.	Memphis, Tenn.	SHPX	8722	8033		"
8–19*	"	"	SHPX	8817	7996		"
	*From Upshur Refining Company - Shipper - Primrose Petroleum Co. Per Upshur Refining Company, H. T. Melton.						
8–28	Modern Refg. Corp.	Little Rock, Ark.	SHPX	8322	8125	Upshur	Team
8–31	" " "	Hattiesburg, Miss.	SHPX	2392	10036	"	"
		(Fuel Oil)					
8– 5*	Dennison Compress Co.	Dennison, Texas.	SHPX	11759	10212		
	*From Frank B. Chatfield, Shipper Frank B. Chatfield, Per Upshur Refining Company.						

[fol. 144]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8– 7*	ShermanCompressCo.	Sherman, Tex.	SHPX	8872	8007		"
	*From Upshur Refg. Co., Shipper Frank B. Chatfield, Upshur Refg. Co., By H. Melton						
8– 8*	Collin County Mill & Elev. Co.	McKinney, Tex.	GATX	25842	8003		
	*From Upshur Refg. Co., Shipper Frank B. Chatfield, Upshur Refg. Co., H. T. Melton.						
	(Cracking Oil)						
8–23	PetroleumProductsCo.	Omaha, Neb.	GATX	26593	8095		Team
	Primrose Petroleum Company, Per Upshur Refining Company.						
8–23	PetroleumProductsCo.	Omaha, Neb.	SHPX	8080	8096		"
	Primrose Petroleum Company, Dallas, Texas, Per Upshur Refg. Co.						
8–27	PetroleumProductsCo.	Fayette, Mo.	SHPX	7605	7623		
	From Upshur Refg. Co., Shipper Primrose Pet. Co., Per Upshur Refg. Co.						

[fol. 145] Walter S. Behrens further stated that there are fifty-one refineries in the East Texas Field and that the following eleven refineries have failed to make the reports required by the Department of the Interior:

Panama, Canyon, Foshee, Carnation, Lake, Locke, Southport, Owl, Lotus, Hanover, and Acme.

The Defendants introduced in evidence a statement by Kent B. Knox, who stated that he is employed by the United States Department of the Interior, Division of Investigations, as an Oil Enforcement Agent in the East Texas Oil Field; that in the performance of his duties he compiled from official records of the War Department, U. S. Engineer Office, the Collectors of Customs, Department of Commerce, and the Railroad Commission of Texas, the following data:

Tanker Movements

All Movements Through Texas Ports

Figures taken from records of the War Department, United States Engineer Office, Galveston. Reduced from tons (2000 lbs) to barrels of 42 gallons on the basis of 6.44 barrels per ton for crude oil, 7.21 barrels per ton for gasoline, 7.00 barrels per ton for kerosene, and 6.28 barrels per ton for gas and fuel oil.

July, 1933

Crude Oil	15,424,674	barrels
Gasoline	6,678,363	"
Kerosene	704,844	"
Oil, Gas & Fuel	3,466,114	"

[fol. 146] August, 1933

Crude Oil	16,275,309	barrels
Gasoline	5,864,830	"
Kerosene	1,068,270	"
Oil, Gas & Fuel	3,787,091	"

September, 1933 (Incomplete)

Figures from Reports by Collectors of Customs, Department of Commerce; Foreign & Coastwise Movement.

Crude Oil—East Texas	4,689,534	barrels
Conroe	1,303,165	“
Other Fields	6,235,617	“
	12,228,316	“
Gasoline	1,122,598	“
Kerosene	238,564	“
Oil, Gas & Fuel	523,069	“

October, 1933 (Gasoline only & Incomplete)

Gasoline	173,839	barrels

Tanker Movement From Louisiana Ports

Reports by Collectors of Customs, Department of Commerce, show large amounts of East Texas crude shipped from Louisiana Ports.

Baton Rouge, La.:

July, 1933

Gasoline	247,298	barrels
Kerosene	47,949	“

August, 1933

Gasoline	470,937	“
Kerosene	20,898	“

September, 1933

Gasoline	244,894	“
Kerosene	6,673	“

New Orleans, La.:

July, 1933

Gasoline	274,065	“

August, 1933

Gasoline	199,930	“

[fol. 147] Shipment of By-Products by Railroad from East Texas July 18 to 31, Incl., 1933

(Figured at 193 barrels per car, 42 gallons per barrel)

Gasoline	910	Cars	175,630	barrels
Kerosene	90	"	17,370	"
Gas Oil	277	"	52,496	"
Distillate	68	"	13,124	"
Naphtha	17	"	3,281	"
Fuel Oil	141	"	27,213	"

August, 1933

Gasoline	2,188	Cars	422,284	"
Kerosene	292	"	56,356	"
Gas Oil	611	"	117,923	"
Distillate	393	"	75,849	"
Fuel Oil	1,157	"	223,301	"
Naphtha	38	"	7,334	"

September, 1933

Gasoline	2,121	Cars	409,353	"
Kerosene	283	"	54,619	"
Gas Oil	578	"	111,554	"
Distillate	376	"	72,568	"
Fuel Oil	1,878	"	362,454	"
Naphtha	41	"	7,913	"

September, 1933

(Topped Crude Included)

Export	2,995	Cars	578,935	"
Interstate	2,773	"	535,189	"
Intrastate	960	"	185,280	"

94% Interstate & Export

October, 1933

(1st to 26th Incl.)

(Topped Crude Included)

Export	3,177	Cars	613,161	barrels
Interstate	2,151	"	415,143	"
Intrastate	789	"	152,277	"

93¼% Interstate & Export.

[fol. 148] The Defendants introduced in evidence a statement by E. F. Everheart and T. J. Breeding, who stated that they were representatives of the Railroad Commission of Texas; that about September 4, 1933, V. E. Cottingham, their Deputy Supervisor, instructed them to make an investigation of the A. & P. Oil Company (A. F. Anding) Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that they were also instructed to meet Mr. A. H. Alcorn of the Department of the Interior, and after meeting Mr. Alcorn and Mr. Martin, another representative of the Department of the Interior of the United States, they proceeded to the Brightwell No. I Well, on the above mentioned lease, and, upon examination of said well, found the following:

A four inch pipe extending from the above well eastward for a distance of about 165 feet, at which point this four inch line was welded to another four inch line running in a north-south direction. The north end of this pipe extended north for about 15 feet, thence east for a few feet, same being open-ended, and the south end extended southward for about 1000 yards. Examination disclosed a gate valve about 4 feet west of the welded junction of the two four inch lines and also another gate valve about 4 feet north of this welded junction.

They requested the man in charge of the above lease to disconnect the four inch line from the well which connects with the north-south line, this he did. The east-west line was disconnected between the welded junction and the gate four feet to the west. After it was disconnected and the open end bull-lugged, they sealed this gate valve with the Railroad Commission seals. To the best of their knowledge, this four inch line connects into the oil string of casing in the well some 6 or 8 feet below the casing-head outlets.

[fol. 149] T. J. Breeding, C. F. Fullingim, and W. C. Howison stated that on September 5, 1933, Deputy Supervisor V. E. Cottingham asked them to make a supplemental report on the A. & P. Oil Company's Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that Mr. Cottingham explained that the previous examination made September 4th, above set out, did not show definitely that the east-west four inch line tied into the oil string or casing, and that he wanted them to dig down alongside of the casing and determine if this connection was made; that they arrived at the well about 3:00 PM and proceeded to dig down by the casing where the by-pass was supposed to be welded into the casing; that after they had dug down about four feet below the surface, a Mr. Hickey, who is in charge of the above well, told them that it would be impossible to dig much further down, because there were 165 sacks of cement around the connection which they were looking for; that he then told them, in order to save them the trouble of digging up the connection, that he would tell them about it; that he said that the four inch pipe was welded through the surface casing and oil string approximately 6 or 8 feet below the casing-head outlets and that 23 feet east of the well another gate valve would be found on the four inch line and that they dug up this gate and found it closed.

The Defendants introduced in evidence a statement by E. N. Stanley, Chief Investigator for the Railroad Commission of Texas, and V. E. Cottingham, Deputy Supervisor for the Railroad Commission of Texas, who stated that on the 6th day of September, 1933, Mr. Tom Potter came [fol. 150] to the Railroad Commission's office, located in Kilgore, Texas; that Potter said in their presence that he had come for the purpose of discussing with them the by-pass connection which had been found on the A. & P. Oil Company (A. F. Anding) Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that during the discussion, he represented himself as being a part owner of the above well and wanted to know if they were going to file a violation complaint with the Attorney General's Department for having a by-pass connection; that they told him the matter would be referred to the Attorney General's Department for opinion; that Mr. Potter readily admitted a four inch pipe had been welded into the oil string casing and said that the connection had been made for by-passing oil from the well, but that it had not been used and that they did not intend to use it until the embargo was lifted; and that Potter also stated that a concrete slab was between this connection and the surface of the ground.

E. N. Stanley further stated that since January 24, 1933, he has been in charge of proration in the East Texas Oil

Field for the Railroad Commission of Texas; that the East Texas Oil Field now has approximately 11,000 producing wells; that in the field there are hundreds of miles of pipe lines, gathering systems, and other connections used for the transportation of oil from wells to tanks, to gathering systems, to loading racks and refinery connections; that in the performance of his official duties, as Chief Investigator for the Railroad Commission in the East Texas Oil Field, among many violations, the following violations had been brought to his attention:

Southport Pet. Co.: This refinery has received oil from the Travis and Kroll, Crowder leases and King leases, Van [fol. 151] Winkle Survey, which has been illegally produced continuously and still doing so. The above company was caught using by-pass on both above mentioned leases.

The Southport Petroleum Company does not make out reports of any kind, operate a pipe line without permit, refuse to give any kind of information whatsoever and have an eight foot wire fence around the refinery proper which prevents inspection or investigation by Railroad Commission employees of their use of illegally produced crude oil.

On September 20th, 1933, their I & G N Ry. lease well was caught flowing to Southport Pet. Co., refinery without making reports nor obtaining approved tenders.

Panama Refining Co.: This refinery has run illegally produced oil from the Jay Simmons well, Ben Bean lease, Van Winkle Survey. They were caught using a by-pass on March 22nd and reported to Attorney Gen'l. The Panama Refining Company has continuously run hot oil, and have refused the Railroad Commission any kind of information and inspection of their properties.

The Defendants introduced in evidence a statement by Colonel Louis S. Davidson, who stated that during the military occupation of the East Texas Oil Field, he was commanding officer of the 124th Cavalry, which unit of the National Guard was designated by the Governor to administer military law in this field while it was under martial [fol. 152] law by proclamation of the Governor of the State of Texas; that during this occupation and since he has kept in close touch with the conditions in the East Texas Oil

Field and knows that there existed there a chaotic condition; that the Rules and Regulations of the Railroad Commission were openly scoffed at; that many operators, producers and refiners and others continuously violated the Rules and Regulations as to production and movement of oil; that millions of barrels of illegally produced oil entered the channel of interstate commerce and that conditions as existed in this field had a demoralizing effect upon the national markets; that without Federal control of production at its source or distribution from the field, both in the crude petroleum and its products, that these conditions will again return to the East Texas Oil Field, thus destroying the national markets and, in fact, the oil industry itself.

He further stated that while he was commanding officer in the East Texas Oil Field, his staff of officers and enlisted men uncovered by-passes in enormous numbers, they discovered every conceivable by-pass that could be thought of by an oil racketeer, unbelievable systems of connection and network of lines were uncovered, the existence of which, without having actually observed them, is almost unbelievable; that millions of barrels of illegally produced oil have left the East Texas field and hundreds of royalty owners, land owners, and fee owners have been defrauded of their property by such over-production which, in fact, is nothing but stealing that part from the common pool to which his neighbor is entitled; that in his opinion, the greatest step toward eliminating these chaotic conditions from the East Texas Oil Field was taken by President Roosevelt on July 11, 1933, when he signed his Executive Order prohibiting [fol. 153] illegal or "hot oil" from entering into the stream of interstate commerce. Conditions are greatly improved in the East Texas Oil Field since that date; that it is witness's belief that without Federal control in this field conditions would be unbearable; and that the national oil markets would be destroyed and thousands of people would be destitute.

He further stated that during the period from August 17, 1931, to December 20, 1932, a portion of which time the field was under martial law, all of the refineries in the East Texas Oil Field, with the exception of two or three, had their own pipe line or gathering system; that these refineries did not use seals on the lock stops on the tank batteries located on the leases from which they were receiving oil as is required and which is done by legitimate pipe line companies; that these lock stops can be opened at will allowing oil to flow from the lease to the refineries at the same time that the well is producing oil into tanks and that some of the refineries had wells flowing directly to storage tanks located at the refineries; that it is impossible to determine the amount of oil produced from leases to which these refineries are connected without keeping a man on duty at such wells the entire 24 hours in each day, or without gauging the storage tank located at the refinery; that he is familiar with the pipe line system in Gladewater and Kilgore, Texas, and that oil can be delivered at any point in the East Texas Oil Field to almost any refinery in the field and can be delivered from one refinery to another. He further stated that in most cases, there are loading racks at the refinery; that refineries having no loading racks have lines from the refinery to loading racks; that during the months of April, May, June and July, 1933, hundreds of cars of crude oil were loaded and shipped out of the East Texas [fol. 154] Field by refineries; that A. & P. Oil Company, which is Anding & Potter, the owner of the Panama Refining Company, loaded hundreds of cars of crude oil which were shipped to the coast, where same was put into foreign and interstate commerce; that there were numerous cases on record where the surplus over-produced oil had gone to the refineries, and the royalty owner had received one price for his legal oil and a much smaller price for the excess oil; that in many instances, in the past he has records to show that the royalty owner did not receive payment for a large majority of the over-produced oil that went to the refinery; that it is absolutely useless to check pipe line, leases and movement of oil by tank cars from loading racks other than the refineries and allow the refineries to run unrestrained in the handling of crude oil, when, in fact, the majority of these refineries are not only in the refining business but are brokers for crude oil; and that unless all other outlets are checked, there is no way of arriving at the total production in the East Texas Oil Field.

The Defendants introduced in evidence statements by K. B. Knox, H. L. Bray, Howard E. Tyson and J. G. Floyd, each of whom stated that he is an Oil Enforcement Agent of the Department of the Interior; that in the performance of his official duties in the State of Texas it has been necessary to make investigations as to the production of illegal oil and the use of illegal underground pipe net work, known as by-passes; and that he has listed a considerable number of such illegal practices which he has discovered in the East Texas Field.

[fol. 155] The Defendants introduced in evidence a statement of **Neal Powers**, who stated that he is Assistant Attorney General for the State of Texas; that it is his duty to prosecute cases and suits for the State of Texas arising out of violations of the rules and regulations of the Railroad Commission of Texas; and that he has compiled a list of the cases pending before his office against connections of refineries situated in the East Texas Oil Field for violations occurring from May 4, 1933, to August 1, 1933, which list shows that there are a large number of alleged violations by connections of refineries who are complainants in this case.

The Defendants introduced in evidence a statement by A. D. **Ryan**, who stated that his official position is that of Special Agent in Charge of the Tyler Office of the Division of Investigations, Department of the Interior; that on July 14, 1933, he was directed by the Director of Investigations to proceed to East Texas for the purpose of enforcing the Regulations issued by the Secretary of the Interior under Section 9 (c) of the Act of June 16, 1933, Public 67 (73 Congress); that when he arrived in East Texas he found that a large number of operators, refiners, gathering systems and pipe lines were utterly disregarding the Rules and Regulations of the Railroad Commission of Texas, that in the month of June some five million barrels of excess oil were produced and run either to storage or from the East Texas Oil Field; that in July this overproduction amounted to approximately two million barrels of oil; that in August excess production amounted to in the neighborhood of six hundred thousand barrels; that taking into consideration the enormous number of wells, which [fol. 156] is in round numbers 11,000, to properly police each well would require an enormous force of men; and that he believes that the proper and successful way in which to enforce the Regulations issued in Section (9) (c), is by requiring reports as designated in the Regulations issued by the Secretary on July 15 and 25, 1933.

He further stated that it is his belief that the small refineries and skimming plants, situated in the East Texas Oil Field, are the outlet either for crude petroleum or the products thereof for a large part of the oil now being produced in excess of the allowable as set by the Railroad Commission of Texas; that he has made many inspection trips throughout the field and, from his observations and by checking reports secured from some refineries, knows that products far in excess of crude receipts as shown are disposed of by these "hot" refineries; that the agents of his office have been hindered and prevented from properly enforcing the regulations issued under Section 9 (c) by these "hot" refineries; that many obstacles have been placed in the way of these agents; and that while they have not openly been threatened with violence, they have been, by various means, prevented from securing reports and gauges of refinery tanks, which information and data is necessary if President Roosevelt's Executive Order of July 11, 1933, prohibiting illegally produced oil from entering the stream of interstate commerce is to be successfully enforced.

The Defendants offered in evidence a statement by Avery H. Alcorn and a chart prepared by him showing the relation between the Total Daily Average Oil Movements, [fol. 157] the Total Daily Average Allowable Production, and the Total Daily Average Over-Deliveries of Oil in barrels in the East Texas Field from February 27, 1933, to September 26, 1933. He stated that he believed the statements shown in the chart are true.

The Defendants introduced in evidence a statement by J. H. Leech, who stated that he is a Special Agent of the Division of Investigation, Department of Interior; that in connection with his official duties, it has been necessary for him to make a careful study of the Regulations issued by the Secretary of the Interior on July 15, 1933, and the

Amendments thereto; that he is also familiar with the various forms of the Railroad Commission requiring reports; that the Railroad Commission forms requiring reports from producers, shippers, gathering systems and pipe lines have been adjusted to comply substantially with the requirements of the Federal Regulations; that it has been arranged that they may continue to be filed with the Railroad Commission, which furnishes the Department of Interior with a copy of each report; that the reports are furnished to producers, shippers, gathering systems and pipe lines without cost, that it appears that no hardship has been placed upon anyone required to furnish these reports, since the Regulations are reasonable and do not demand information which is not easily acquired; and that all of the reports are necessary for the proper enforcement of the National Industrial Recovery Act. He further stated that it is also necessary to require reports from processors of petroleum, in order to prevent the interstate shipment of illegally produced oil; that for this reason Regulation V was inserted in the Regulations and requires each pur- [fol. 158] chaser, shipper or refiner of petroleum, including all persons engaged in the processing of petroleum in any manner, to make reports showing the place and date of the receipt, the names and addresses of the producers and of the persons from whom the petroleum was received, the disposition of said petroleum, including the place and dates of delivery, the amounts delivered, the names and business addresses of the consignees, the transporting agencies and the amount of petroleum held in storage at the end of the calendar month; that this regulation is not unreasonable for the reason that it is believed that for the successful operation of any business, the directing heads thereof should, at all times, have this data available, since it is necessary to them in order to determine the financial condition of their businesses and also in order to make necessary tax reports to the State and Federal Governments; and that he has determined that a large part of the shipments from refiners in the East Texas Field enter interstate commerce.

The Defendants offered in evidence the following exhibits:

Executive Order of the President dated July 11, 1933, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State Law or valid Regulation or Order prescribed thereunder by any board, commission, officer, or other duly authorized agency of the State.

Executive Order promulgated by President Roosevelt [fol. 159] dated July 14, 1933, authorizing the Secretary of the Interior to exercise all the powers vested in the President for the purpose of enforcing Section 9 (c) of the Act of Congress of June 16, 1933, (Public No. 67, 73d Congress), and said Order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

Defendants then offered in evidence their Exhibit No. I, being a Stipulation by the Attorneys for complainants and defendants which is in words and figures as follows:

DEFENDANT'S EXHIBIT No. I

STIPULATION

Come now the plaintiffs and the defendants by their respective counsel and hereby stipulate and agree that on the final hearing in the above entitled cause the evidence or testimony produced or introduced may be so produced or introduced in the form of affidavits, and they respectively, on behalf of the plaintiffs and defendants, waive the right of cross-examination or the production or introduction of oral testimony, and submit the cause to the court for decision upon the affidavits which each of them respectively offer on said final hearing.

Dated at Tyler, Texas, in said District, this 6th day of November, 1933.

F. W. Fischer, Attorney for Plaintiffs. Charles Fahy, Attorney for Defendants.

[fol. 160] The above and foregoing is all the evidence necessary for a review of the rulings assigned as error on this appeal introduced at the trial of said cause and all proceedings had in the trial thereof.

Wherefore, A. D. Ryan, J. Howard Marshall and S. D. Bennett, defendants and appellants, pray that the above statement of evidence be settled, approved and allowed by the above-entitled court as a true, full and correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal taken and given on the trial of said cause, for use on the appeal taken to the United States Circuit Court of Appeals for the Fifth Circuit.

Dated this 2 day of April, A. D. 1934.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants.

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated that the above and foregoing statement of evidence is a true and correct statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal and the same may be approved by the Judge without notice.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants. F. W. Fischer, Attorney for Plaintiffs and Appellees.

[fol. 161] IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

The foregoing statement of evidence is in all respects hereby approved and settled as a true and correct statement of all the evidence necessary for a review of the rulings assigned as error on this appeal and adduced on the trial of the above-entitled action.

Dated this 2nd day of April, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

In United States District Court

Decree—Filed Feb. 21, 1934

Came on to be heard the above styled and numbered cause, together with the above numbered causes consolidated therewith; and thereupon came the Panama Refining Company, a corporation, and A. F. Anding, complainants in Cause No. 635, with their attorney, F. W. Fischer; and came also Locke Refining Company, a corporation, Carnation Refining Company, a corporation, Foshee Refining Company, a corporation, Upshur Refining Company, a corporation, Supreme Refining Company, a corporation, Lake Refining Company, a corporation, Southport Petroleum Company, a corporation, Canyon Refining Company, a corporation, Lotus Refinery, a partnership composed of Jack Bell and W. H. Williams, and J. P. McGee, complainants in [fol. 162] Cause No. 636, with their attorney, F. W. Fischer; and came also Hanover Refining Company, a copartnership composed of J. S. Presnall, Jr., Brown McCallum, and Jack Buckley, Arrow Refining and Producing Company, a corporation, H. I. Johnson, doing business under the firm name of H. I. Johnson Refinery, Deere Creek Oil Company, a corporation, and B. F. Trawick and H. E. Wright, partners, doing business under the name of Dutch Rose Refining Company, complainants in Cause No. 640, with their attorney, F. W. Fischer; and came also the defendants A. D. Ryan, J. Howard Marshall, and S. D. Bennett, with their attorneys, and announced ready for trial; and the Court having considered the pleadings, evidence, and argument of counsel in said original cause and the consolidated causes above named, is of the opinion that said complainants are entitled to injunctive relief.

It is therefore ordered, adjudged and decreed as follows, to wit: that the defendants, A. D. Ryan, Special Agent of the Division of Investigation, Department of Interior of the United States, S. D. Bennett, United States Attorney, Eastern District of Texas, and J. H. Marshall, Special Assistant to the Attorney General of the United States be and they are hereby permanently enjoined and restrained from enforcing any rule or regulation promulgated by the Secretary of the Interior or other designated agent under the National Industrial Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce.

Said defendants, their servants, agents and employees and any one else purporting to act under the authority of the National Industrial Recovery Act or any rule or regula- [fol. 163] tion promulgated thereunder, are hereby perpetually restrained and enjoined from going upon or about the premises of complainants or in any wise interfering with them or molesting them in the conduct of their business by reason of the provisions of The National Industrial Recovery Act or regulations promulgated thereunder.

It is further ordered that the said defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall be served by the marshal with a copy of this permanent injunction.

It is further ordered that the complainants recover of and from said defendants their costs in this behalf expended.

To the aforesaid order and decree said defendants, and each of them, duly except in open court.

Dated this the 21st day of February, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION FOR FILING FINDINGS OF FACT AND CONCLUSION OF LAW—Filed Feb. 26, 1934

Now comes the defendants in the above entitled and numbered cause and moves that this Honorable Court file its [fol. 164] findings of facts specially, and state separately its conclusions of law thereon.

Dated this the 26th day of February, 1934.

Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 17, 1934

This cause above styled and numbered, together with the numbered causes consolidated therewith, came on to be heard before this Court on November 6, 1933; came the various parties complainant with their attorneys and the various parties defendant with their attorneys; and thereupon said cause was heard on the application for temporary injunction and by agreement of all the parties and with consent of the Court, it was stipulated, at the conclusion of the testimony, that this cause also should be determined upon its merits; and the Court having considered the pleadings, evidence, agreements and brief of counsel upon the issues presented, under the stipulation that such issues were those made by the amended Bill of Complaint filed by the Panama Refining Company, et al., on October 23, 1933, and the answer thereto filed by the defendants on November 6, 1933, makes the following findings of fact:

I

That the Panama Refining Company and the other complainant refiners are the owners and operators of crude oil [fol. 165] refining plants located in or adjacent to the East Texas Oil Field, purchasing all of their oil requirements from various and sundry producers in the East Texas Oil Field and that said refiners sell their products to dealers within the State of Texas, as well as to dealers outside of the State of Texas.

II

That A. F. Anding and the other complainant producers own and operate various oil and gas leases in the East Texas Oil Field and that such producers are not engaged in shipping petroleum or the products thereof outside of the State of Texas.

III

That the complainant refiners are not engaged in interstate commerce, except as to that portion of their refined products of crude oil that they manufacture in their respective refining plants in Texas and sell and have transported to other states; nor does the refining of crude petroleum, and the intrastate sale or transportation of refined petroleum products, affect interstate commerce, except incidentally and remotely.

IV

That the complainant producers are not engaged in interstate commerce nor does the production of petroleum in excess of quotas allocated by a state regulatory body affect interstate commerce, except incidentally and remotely.

V

That defendant A. D. Ryan is acting under direction from and as the agent of the Secretary of the Interior to whom the President of the United States has duly delegated his [fol. 166] powers and duties under the National Industrial Recovery Act for the purpose of enforcing Section 9 (c) thereof and who, under Presidential authorization, is Administrator of the Code of Fair Competition for the Petroleum Industry.

VI

That defendant J. Howard Marshall is a Special Assistant to the Attorney General of the United States for the purpose of assisting and aiding in the enforcement of Section 9 (c) and the regulations adopted under the National Industrial Recovery Act.

VII

That defendant S. D. Bennett is the duly appointed United States Attorney for the Eastern District of Texas.

VIII

That defendant A. D. Ryan is demanding reports from complainant producers under Regulations IV and from complainant refiners under Regulations V and is demanding the right to inspect complainants' books and records under Regulations VII issued by the Secretary of the Interior, all of which Regulations were issued under authority of the National Industrial Recovery Act, for the purported reason of enforcing Section 9 (c) of said Act, and all defendants are threatening to prosecute or to cause complainants to be prosecuted for failure to make such reports and permit such inspection of books and records.

IX

Regulations IV, V and VII adopted under the National Industrial Recovery Act have no fair or reasonable rela- [fol. 167] tion to the purposes of Section 9 (c) of said Act.

X

That defendants have continually entered upon the premises of complainants without permission of complainants and have attempted to examine complainants' books and records relating to production, and have attempted to gauge their tanks and inspect their property, all of which acts the defendants assert are authorized by said Section 9 (c) of the National Industrial Recovery Act, and the Regulations issued under said Act, that certain respondents incident to such visitations have dug up and destroyed certain property about complainants premises.

XI

That defendants have threatened and are attempting to enforce against complainants criminal prosecution by reason of complainants' failure and refusal to make and file the reports prescribed by Regulations IV and V, and submit their books and records to inspection as provided by Regulation VII.

Wherefore, the premises considered, the Court finds the following conclusions of law:

I

That the Secretary of the Interior is not an indispensable party to the cause of action asserted against the defendant A. D. Ryan.

II

Regulations IV, V, and VII, and all other rules and regulations issued by the Secretary of the Interior under [fol. 168] the National Industrial Recovery Act, are invalid, illegal, unconstitutional and not authorized by Title I of the National Industrial Recovery Act, insofar as the same apply to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce.

III

That defendant A. D. Ryan has been acting and intends to continue to act beyond the scope of his authority under Title I of the National Industrial Recovery Act, in entering upon the properties of the complainants.

IV

That defendants are without authority to prosecute or to threaten to prosecute the complainants under the National Industrial Recovery Act, even though complainants may fail and omit to file the reports required by Regulations IV and V, or to keep and maintain for inspection books and records as required by Regulation VII.

V

That the National Industrial Recovery Act or the rules and regulations promulgated thereunder do not authorize the defendants, their servants, agents and employees, or any one else purporting to act under the same to go upon or about the premises of the complainants herein or in anywise interfere with or molest them in the conduct of their business.

VI

That defendants by the above described acts are causing and unless restrained will continue to cause irreparable injury to the complainants.

[fol. 169] To the foregoing findings of fact and conclusions of law, the said defendants and each of them in open Court duly excepted.

Done this the 16th day of March, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

In United States District Court

Notice of Intention to Appeal—Filed March 17, 1934

A. D. Ryan, S. D. Bennett, and Phil E. Baer, defendants in the above entitled cause, hereby serve notice upon the complainants herein through their attorney of record of their intention to appeal to the United States Circuit Court of Appeals, Fifth Circuit, from the decree entered herein on the 21st day of February, A. D. 1934.

Chas. I. Francis, Attorney for Defendants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

F. W. Fischer, Attorney for Complainants.

[fol. 170] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND STAY OF INJUNCTION—Filed March 26, 1934

To the Honorable Randolph Bryant, Judge of said Court:

A. D. Ryan, S. D. Bennett, and J. Howard Marshall, your petitioners, respectfully show:

1. Petitioners are the defendants in the above-entitled cause.

2. On the 21st day of February, 1934, a final decree was entered in said cause against petitioners in the Tyler Division of the Eastern District of Texas.

3. Your petitioners consider themselves aggrieved by the decree aforesaid and believe there are manifest errors which are set forth in detail in the Assignment of Errors filed herewith and that an appeal may be taken by them from this Honorable Court to the Circuit Court of Appeals for the Fifth Circuit.

4. Unless this Honorable Court grants your petitioners a stay of said injunction pending disposition of the appeal herein to the Circuit Court of Appeals there will be grave and irreparable injury and damage done to your petitioners and to the many producers and refiners of petroleum and the products thereof throughout the State of Texas and [fol. 171] elsewhere within the United States, and to the Secretary of the Interior in his efforts to administer the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

5. Your petitioners, and each of them, are employes of departments of the United States Government and have been directed to prosecute appeal herein by said departments and, therefore, said appeal should be allowed without bond, obligation, or other security being required of them, as provided in Section 870, Title 28, United States Code.

Wherefore, your petitioners pray that an order be made allowing them to appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana; and that an order staying the injunction decreed be entered and the decree in all things be superseded pending said appeal; that no bond, obligation, or other security be required of them in connection with said appeal or stay, that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which the decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals.

J. Howard Marshall, Charles Fahy, Chas. I. Francis,
Attorneys for Appellants.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed March 26, 1934

Come now A. D. Ryan, S. D. Bennett and J. Howard Marshall, defendants in the above-entitled cause, and file the following joint Assignment of Errors upon which they will rely upon the prosecution of an appeal herewith petitioned for in said cause from the decree of this Court granting a perpetual and permanent injunction entered on the 21st day of February, 1934.

1

The Court erred in refusing to dismiss the Bills of Complaint against the defendant, A. D. Ryan, in that the Court was without jurisdiction to entertain said cause as to him, because of the absence in said cause of an indispensable party defendant, to-wit: Harold L. Ickes, Secretary of the Department of the Interior.

2

The Court erred in refusing to dismiss the Bills of Complaint against all of the defendants.

3

The Court erred in holding that Regulation IV is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

4

The Court erred in holding that Regulation IV is invalid and unconstitutional.

[fol. 173] 5

The Court erred in holding that Regulation V is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

6

The Court erred in holding that Regulation V is invalid and unconstitutional.

7

The Court erred in holding Regulation VII is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

8

The Court erred in holding that Regulation VII is invalid and unconstitutional.

9

The Court erred in holding the defendants are unauthorized by the National Industrial Recovery Act to go upon the property of the complainants for the purpose of inspecting books and records and further doing such acts as are reasonably necessary in inspecting such property, gauging tanks, and examining pipes and pipe connections, as not reasonable nor necessary for the enforcement of Section 9 (c) of the National Industrial Recovery Act.

10

The Court erred in failing to hold that, in authorizing the acts set forth in Paragraph 9 above, Section 9 (c) of the [fol. 174] National Industrial Recovery Act is valid and constitutional.

11

The Court erred in holding that the defendants are without authority to prosecute, or to cause to be prosecuted, the complainants under the National Industrial Recovery Act for the failure to file the reports required by Regulations IV and V or to keep and maintain for inspection books and records as required by Regulation VII.

12

The Court erred in granting a permanent injunction against the defendants.

13

The Court erred in finding the actions of the defendants are causing and, unless restrained, will continue to cause irreparable injury to complainants.

14

The Court erred in entering the decree granting a permanent injunction in that said decree is so vague, indefinite and uncertain that defendants are prevented from doing many acts which the Court has not held to be unlawful.

15

The Court erred in entering the decree granting a permanent injunction in that it is impossible for defendants and their agents to determine therefrom what is intrastate commerce within the meaning of the decree.

[fol. 175] 16

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule and Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the production of petroleum in that said production affects interstate commerce, the support of an army and the maintenance of a navy.

17

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the refining of petroleum, in that said refining affects interstate commerce, the support of an army and the maintenance of a navy.

18

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the storage of petroleum or the products thereof in that said storage affects interstate commerce, the support of an army and the maintenance of a navy.

19

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Inte- [fol. 176] rior or other designated agents under the National Industrial Recovery Act insofar as same applies to the transportation of petroleum or the products thereof in intrastate commerce in that said transportation affects interstate commerce, the support of an army and the maintenance of a navy.

20

The Court erred in permanently enjoining and restraining the defendants in the enforcement of "any" Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act in that all of the matters covered by the Rules and Regulations promulgated under the authority of said Act are not raised by the issues joined by the pleading herein.

21

The Court erred in entering the decree herein perpetually restraining and enjoining the defendants, their servants, agents and employees, and anyone else purporting to act under the authority of the National Industrial Recovery Act or any Rule or Regulation promulgated thereunder from going upon or about the premises of the complainants or in any wise interfering with them in the conduct of complainants' business, by reason of the provisions of the National Industrial Recovery Act or Regulations promulgated thereunder, in that the said decree and injunctive relief are not limited to the doing of all of said things in connection with intrastate commerce.

22

The Court erred in entering the decree and permanently enjoining the defendants herein from going upon or about [fol. 177] complainants' premises in that the term "going upon or about" and "premises" are too vague, indefinite and uncertain.

23

The Court erred in entering the decree and permanently enjoining the defendants herein from going upon or about complainants' premises in that the premises of said complainants are not fully shown in complainants' Amended Bill of Complaint or any other pleading filed herein as to extent, description and location of the same.

24

The Court erred in holding that transactions of the complainant refiners, except as to that portion of the refined products of crude oil that they sell and have transported to other states, are not transactions in or directly affecting interstate commerce.

25

The Court erred in holding that the transactions of the complainant producers in connection with the production of crude oil are not transactions in or directly affecting interstate commerce.

26

The Court erred in holding that the production, purchase and sale of petroleum and the products thereof, wholly within the State of Texas, are not transactions directly affecting interstate commerce in such commodities.

27

The Court erred in failing to hold, as a matter of fact, that eighty-five per cent of the crude oil produced in the East Texas Field and of the products thereof are commingled with, or move in, or enter the stream of [fol. 178] interstate commerce.

28

The Court erred in failing to hold that the production of crude oil in excess of the amount allocated by a valid state order, and the refining, storing and transportation thereof, demoralizes the interstate market for petroleum and its products on a nation-wide scale, and disrupts the natural channels of interstate commerce in petroleum and the products thereof.

29

The Court erred in failing to hold that the production of crude oil in excess of the amount allocated by a valid State order results in a depletion of the supply of oil necessary to the movement of interstate commerce and to the support of an army and the maintenance of a navy.

30

The Court erred in failing to hold that the preservation of the nation's petroleum resources is essential to the national defense and to the support of an army and the maintenance of a navy.

31

The Court erred in failing to hold that a national emergency exists in industry generally and specially in the Petroleum Industry.

32

The Court erred in finding the defendants have destroyed certain property of the complainants.

Wherefore, defendants pray that said decree be reversed, [fol. 179] said injunction be dissolved and for such other and further relief as to the Court may seem just and proper.

Dated this the 26th day of March, A. D., 1934.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 26, 1934

Upon petition of the defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall and it appearing to the Court that the appeal herein is being prosecuted pursuant to the direction of the Solicitor General of the United States and the Department of Justice, it is hereby ordered as follows:

1. That an appeal without bond is hereby allowed in the above-entitled cause to said defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall to the United States Circuit Court of Appeals for the Fifth Circuit for the final decree heretofore entered in said cause on the 21st day of February, A. D., 1934, granting a perpetual and permanent injunction.

2. That the perpetual and permanent injunction issued under the authority of said decree not be stayed.

[fols. 180 & 181] 3. That a citation be issued directed to the complainants herein to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana, within thirty days from the day of taking said appeal as required by law.

4. That the Clerk of this Court transcribe, certify and transmit to the said United States Circuit Court of Appeals for the Fifth Circuit, a true and complete transcript of the record and all other proceedings in this cause as required by law.

Done and ordered at Beaumont, Texas, this 26th day of March, A. D., 1934.

Randolph Bryant, Judge of the United States District Court in and for the Eastern District of Texas.

[File endorsement omitted.]

Citation in usual form showing service on F. W. Fischer, filed March 26, 1934, omitted in printing.

[fol. 182] IN UNITED STATES DISTRICT COURT

CERTIFICATE OF DIRECTION TO APPEAL—Filed March 26, 1934

Elijah Crippen, being first duly sworn, deposes and says:

I hereby certify that I am an officer working under the Attorney General of the United States in the Department of Justice, with the title of "Special Assistant to the Attorney General."

I hereby further certify that the Solicitor General of the United States and the Department of Justice have authorized and directed the following defendants, namely, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, to take an appeal in said cause from the decree of this Court granting a permanent injunction, and to apply for an order staying and superseding said permanent injunction.

Elijah Crippen.

[fol. 183] Subscribed and sworn to before me this 24th day of March, A. D., 1934. Mrs. H. I. Griffies, Notary Public in and for Smith County, Texas. My commission expires June 1, 1935. (Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed April 2, 1934

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the appeal heretofore allowed herein, shall include the following:

1. Caption.
2. Amended Bill of Complaint and Exhibits attached thereto.
3. Answer of defendants to Amended Bill of Complaint.
4. Stipulation of all parties on pleading.

[fol. 184] 5. Statement of the evidence and Waiver of Notice.

6. The Decree.

7. Motion for Filing Findings of Fact and Conclusions of Law.

8. Findings of Fact and Conclusions of Law.

9. Notice of Intention to Appeal.

10. Petition for Appeal and Stay of Injunction.

11. Assignment of Errors.

12. Order Allowing Appeal without Bond.

13. Citation on Appeal and Acceptance of Service thereof.

14. Certificate of Direction to Appeal.

15. Notice of Election for Printing Record.

16. Stipulation as to Contents of Transcript of Record.

17. Clerk's Certificate.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants. F. W. Fischer, Attorney for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 185] IN UNITED STATES DISTRICT COURT

NOTICE OF ELECTION FOR PRINTING RECORD—Filed April 2, 1934

A. D. Ryan, S. D. Bennett and J. Howard Marshall, appellants in the above cause, hereby give notice of their election to take and file in the Circuit Court of Appeals for the Fifth Circuit to be printed under the supervision of its Clerk a transcript of the record herein.

This the 2 day of April, A. D., 1934.

Chas. I. Francis, Attorney for Appellants.

[File endorsement omitted.]

[fol. 186] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

No. 652. Equity

AMAZON PETROLEUM CORPORATION et al., Complainants,

v.

RAILROAD COMMISSION OF TEXAS et al., Respondents

No. 635. Equity

PANAMA REFINING COMPANY et al., Complainants,

v.

A. D. RYAN et al., Respondents, and Cases Consolidated Therewith

OPINION OF THE COURT—Filed Feb. 12, 1934

BRYANT, District Judge:

In these related cases complainants attack the validity of an Act of Congress known as the National Industrial Recovery Act, and certain regulations of the Secretary of the Interior, the provisions of the Code for the petroleum industry established under the Act, upon constitutional grounds.

In the Anding and Panama Refining Company cases a rule to show cause was issued returnable October 2, calling upon the respondents, Ryan, et al., to show cause why a preliminary injunction should not be granted as prayed. On the hearing upon this rule, and the respondent's answer [fol. 187] thereto, the rule was discharged and the application for preliminary injunction denied. The cause was thereupon set for final hearing upon November 6th. Shortly thereafter, a similar attack was made upon the statute and the regulations by the complainants in the other cases listed above, in which the individual members of the Railroad Commission of Texas, their agents, the Attorney General of Texas, and various district and county attorneys of the State were made respondents, and in which the complainants invoking the Fourteenth Amendment, sought injunctive relief, interlocutory and final, to restrain enforcement against them of certain orders of the Railroad Commission limiting their production of oil.

It appearing that the latter cause of action presented a case for three judges, a statutory court was ordered assembled to pass upon the constitutional question raised.

The statutory court in limine suggested its want of jurisdiction over the cause of action against the Federal respondents as not within Section 380, and decided that such cause of action was for the consideration of the District Judge alone.

All parties desiring the application to be heard and determined as to both causes of action, it was in open court stated and agreed to by all parties, and the judges consenting, made matter of record, that each cause should be regarded as submitted to and to be decided by the tribunal having jurisdiction of it. It was further stipulated of record in the latter suits filed, that the suits be submitted on the evidence taken at such hearing, both on the application for interlocutory injunction and on the merits.

The pertinent portions of the Act of Congress involved are as follows:

[fol. 188] "An Act to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Industrial Recovery

Declaration of Policy

Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living, of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards [fol. 189] of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies

Section 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the [fol. 190] President may approve a code or codes of fair competition for the trade of industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided, further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or code-. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transac- [fol. 191] tion in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended: but nothing in this title shall be

mission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade, or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misde-[fol. 192] meanor and upon conviction thereof an offender shall be fined nor more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Oil Regulation

Sec. 9 (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State.

Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

[fol. 193] **Rules and Regulations**

Sec. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel, or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed or issued under this title shall contain an express provision to that effect.''

The President, pursuant to the claim of power granted to him by said Section 9 (c), issued an Executive Order prohibiting the transportation in interstate and foreign commerce of all petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State.

The President duly delegated to the Secretary of the Interior his power and functions by Executive Order and authorized the Secretary of the Interior to make all necessary or desirable rules or regulations.

Thereafter, the Secretary of the Interior issued rules and regulations purporting to effectuate said Executive Order and Section 9 (c) of the Act. It is paragraph 4 [fol. 194] and 5 of these rules and regulations which are attacked in the present suits and they provide substantially as follows: Regulation 4 requires each producer of petroleum to file a statement under oath not later than the 15th day of each month with the Division of Investigations of the Department of Interior, giving (1) the residence and post office address of the producer; (2) the location of his producing properties and wells, the allowable production therefor as fixed by the State agency; (3) the daily production in barrels; (4) details of deliveries of petroleum and the amount in storage at the beginning and end of the month; and (5) a declaration that no part of the petroleum or products thereof produced and shipped has been produced or withdrawn in violation of State law or valid regulation.

Regulation 5 requires every refiner to file a statement not later than the 15th of each month, with said division of Investigations, containing the following information: (1) the residence and post office address of the refiner; (2) the place and date of receipt, with names and business addresses of the producers or parties from whom the petroleum was received, the amount received, and the amount held in storage on the last day of the calendar month preceding the period covered by the report; (3) details as to the disposition of said petroleum and the amount held in storage or otherwise at the end of said calendar month; (4) a declaration that to the best of the information and belief of the affiant, none of the petroleum received or disposed of, was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by State law or valid regulation.

The Code of Fair Competition, as provided for in Section 3 (a) of the Act, as it relates to the petroleum industry, provides among other things as follows:

[fol. 195] (a) That complainants and other producers engaged in the producing of oil shall pay their employees not less than a specified wage;

(b) Shall not work their employees in excess of a specified number of hours per day;

(c) That all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) That complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, and that the schedule of hours of all such employees conform to these prescribed by said code;

(e) That complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) That complainants, and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a planning and coordinating Committee appointed by the President;

(g) That not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) That required production of oil to balance consumer [fol. 196] demand for petroleum products shall be estimated by a Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The general claim of complainants as against respondents is substantially as follows: that the complainants (producers) are not engaged in shipping any oil either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases and title to such oil passes from complainants upon its being delivered to buyers on the premises where it is being produced. They further claim that the respondents are purporting to act under authority conferred by the National Recovery Act, the Executive Order above referred to, and that the President, assuming to act in his official capacity but without any authority whatever, approved and promulgated what is known as the Code of Fair Competition for the Petroleum Industry, and that by the Executive Order referred to, he attempted to delegate to the Secretary of the Interior full power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry. That the respondents are attempting to enforce the aforesaid code and orders as against these complainants and as an incident to such enforcement are demanding of and compelling complainants to furnish them with reports required by the regulations referred to above, and that as an incident to the enforcement of such demand, they make repeated inspections of complainants' properties and gauge their tanks to ascertain the amount of oil being produced by them. That certain respondents, incident to such visita- [fol. 197] tions have dug up and destroyed certain property about complainants' premises, and will in the future continue to assert such rights of visitation and inspection and invasion of complainants' property rights unless restrained from so doing; that the Federal officers have stated that if the complainants do not comply with said orders and regulations and provisions of the code, they will cause them to be arrested and prosecuted under Section 9 (c) of the National Recovery Act, and that unless restrained said Federal officers will institute and prosecute actions, both civil and criminal against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

The only difference in the case made as to the refiners is that they are engaged exclusively in the production and manufacture of products from crude petroleum; that they are not engaged in interstate commerce and that none of their products when sold by them go into the channels of interstate commerce.

The evidence is without contradiction that the complainants in this case are not actually engaged in interstate commerce.

The claim is made that the provisions of the National Recovery Act, code and regulations, are null and void because:

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

[fol. 198] (c) It authorizes the President to exercise police powers not granted to the National Government by the several states of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainants of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Federal Government the right to compel the complainants and others to produce their papers and effects, compels them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 7th Amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishment.

To this claim of right by complainants, respondents answer by saying in general that under a declared emergency the powers of Congress are expanded beyond their extent under ordinary circumstances, and in ordinary times, and that under the commerce clause, the Federal Government has the power to control the production of petroleum, and that while ordinarily the production of oil or refining thereof is not interstate commerce, that this may so affect interstate commerce so as to come within the regulatory power of Congress. That the Act does not constitute an unlawful delegation of legislative power and is valid.
[fol. 199] The majority opinion this day filed has adjudged that the orders of the Railroad Commission of Texas are valid.

For the purposes of this opinion, it may be conceded that Congress may prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted. The further exceedingly doubtful concession may be made that the Act does not delegate legislative power and authority to the President so that the essential point for decision is as to the validity of the regulations issued by the Secretary of the Interior and the provisions of the code and their binding effect, if any, upon the complainants, under the facts disclosed in this matter.

The above concessions and assumptions are indulged because I have reached the conclusion that the regulations and the code provisions involved have no constitutional basis as applied to the facts of this case.

This is another of those cases which have so frequently engaged the attention of the national courts involving as it essentially does a contest between state and Federal authority and more particularly the extent to which the Federal Government may go in its exercise of authority in regulation of matters ordinarily committed to the regulation of the States.

Owing to the apparent importance of the matter, a statement of my reasons for the conclusion reached is deemed proper.

It has been decided specifically and unequivocally by the Supreme Court that mining is not interstate commerce and the power of Congress does not extend to its regulation as such. United Mine Workers of America v. Coronado [fol. 200] Coal Company, 259 U. S. 407. Champlin Refining Co. v. Corp. Comm., 286 U. S. 210.

As said by the Supreme Court in Oliver Iron Mining Co. v. Lord, 262 U. S. 171, 178: "Mining is not interstate commerce but like manufacturing is a local business subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."

The decisions of the Supreme Court further show that the making or manufacturing of goods are not commerce nor does the fact that these things are to be afterward shipped or used in interstate commerce make their production a part thereof. Hammer v. Dagenhart, 247 U. S. 251, 272.

The Supreme Court said in the famous Child Labor case: "The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. Pipeline cases, 243 U. S. 548, 560. The maintenance of the authority of a State over matters purely local is as essential to the preservation of our existence as is the conservation of the supremacy of the Federal power in all matters entrusted to the nation by the Federal Constitution. In interpreting the Constitution it must never be forgotten that the nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved.

Lane County v. Oregon, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise is inherent and has never been surrendered to the general government * * * This court has no more [fol. 201] important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and State, to the end that each may continue to discharge harmoniously with the other the duties entrusted to it by the Constitution."

As said in Ohio Oil Company v. Indiana, 177 U. S. 190, 211, 212: "In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but the regulation of real property and they must hence be treated as relating to the preservation and protection of rights of an essentially local character."

In the case of Kidd v. Pearson, 128 U. S. 1, the Supreme Court in discussing the extent of the authority of the Federal government under the commerce clause, among other things said: "The line which separates the province of Federal authority or the regulation of commerce from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. The decisions in these cases, though they do not in a single instance assume to trace that line throughout its entire extent or to state any rule further than to locate the line in each particular case as it arises, have almost uniformly adhered to the fundamental principle which Chief Justice Marshall in the case of Gibbons v. Ogden, 9 Wheat 1, laid down as the nature and extent of the grant of power to Congress on this subject and also the limitations, expressed and implied, which it imposes upon State legislation with regard to taxation, to the control of domestic commerce and to all persons and things within its limits of purely internal concern * * * no distinction is more familiar to the common mind [fol. 202] nor more clearly expressed in political literature than that between manufacture and commerce. Manufacture is transformation, the fashioning of raw materials into a change of form for use; the functions are different; the buying and selling and the transportation incident thereto constitutes commerce and the regulation of commerce in a constitutional sense embraces the regulation at least of such transportation. Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in its terms navigation and the transportation and transit of persons and property as well as the purchase, sale and exchange of commodities. If it be held that the term includes the regulation of all such manufactures as were intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with a power to regulate not only manufacturers, but also agriculture, horticulture, stockraising, domestic fishing, mining * * *, in short, every branch of human industry, * * * It was said by Chief Justice Marshall 'that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulations against conflicting and discriminating State legislation.' "

The Supreme Court again in the case of County of Mobile v. Kimball, 102 U. S. 692, laid down the rule as to the constitutional limitations of Congress under the commerce clause in which it held that the power of Congress to regulate interstate commerce is unlimited, but that in regulating commerce between the State and foreign countries the regulations must be uniform and of one system or plan. The [fol. 203] reason is obvious, being so that no discrimination would occur by reason of such legislation.

In the case at bar the regulations sought to be enforced against the complainants apply only to the East Texas and the Oklahoma City oil fields, showing conclusively that they are not intended or meant to be regulations of commerce in a constitutional sense, but merely an attempt upon the part of the Federal government to limit the production of oil from these two fields, and to control the manufacture thereof, essentially matters of State regulation.

It may be argued that the purpose of these statutes as set forth in the declarations of emergency, and of policy by Congress are much broader than the commerce power of Congress and that these purposes of national rehabilitation are sought to be accomplished through a variety of effort of mutual and voluntary agreement which carry no penalties and also by a variety of mere money spending activities of the Federal government particularly in the aid of agriculture.

It is nevertheless true however, that in those provisions in which the government exhibits the heavy hand of authority to control or to compel a surrender of individual right and individual initiative in the fields of agriculture and of industries with pains and penalties, the statutes themselves in their very terms base the power to enforce upon the commerce clause. In this respect the intention of Congress has been made clear.

This conclusion finds support in the legislative history of this Act. Senator Wagner of New York, who was largely instrumental in the formulation and drafting of this legislation, said: "I have been discussing codes which are voluntary both as to their competitive practices and as to their [fol. 204] labor provisions, and it is primarily upon such spontaneous action that the bill relies. It is not my intention to substitute government for business, or to remove from the shoulders of business men the responsibility for economic recovery. The duties of industrialists are enhanced by the opportunities which the bill offers for constructive cooperation." Again, in the same address, he said: "The question of the proper exercise of Federal authority depends upon whether the bill confines itself to national matters or whether it attempts to extend to matters which are of purely local concern. The answer is clear. The language of the bill expressly provides that any compulsory measures such as the licensing feature of the bill, and any penalties for violation of the codes *shall be confined to business in or affecting interstate commerce. Thus no attempt is made to extend Federal action to an area of activity not covered by the commerce clause of the Constitution."*

Legislative intent is made plain when the statute, after making provision for the codes and providing that said codes shall be the standards of fair competition says: "Any violation of such standards *in any transaction in or affecting interstate or foreign commerce* shall be deemed an unfair method" etc. Section 3 (b).

It is a matter of common knowledge that the provisions of the codes do not stop with interstate commerce or with those trades or industries that are interstate in character. There is no pretense of such limitation. To bring such transactions within the constitutional regulatory power of Congress enforceable under penalty of the law, it is necessary to consider that Congress may under the power to regulate interstate and foreign commerce reach back into the states and control without limit the source of produc- [fol. 205] tion and manufacturing processes, dictate the hours of labor, wages to be paid, the conditions of employment and the relations of employer and employee.

That such was not the intent of Congress except as it related to interstate transactions in fact is thus made clear.

It being made clear from the evidence in this case that complainants have not subscribed to such code and are not engaged in interstate commerce, they are not subject to the pains and penalties provided by the Act for violation of such code, because they are clearly not engaged "in any transaction in or affecting interstate or foreign commerce."

To sustain a pretension to powers so vast and so unprecedented and so unheard of should certainly find its basis in the clearest expression of intent upon the part of Congress. Under the plain terms of the Act the expression of intent is to the contrary.

The power to regulate commerce between the states is without question one of the full, complete and plenary powers of Congress. As was said by the Supreme Court in the case of Houston Texas Railroad v. United States, 234 U. S. 342, "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local government. The purpose was to make impossible the recurrence of the evils which had overwhelmed the confederation and to provide the necessary basis of national unity by insuring uniformity of regulation against the conflicting and discriminating state legislation. By virtue of the comprehensive terms of [fol. 206] the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. Gibbons v. Ogden, 9 Wheat 1, 196, 224; Brown v. Maryland, 12 Wheat 419, 446; County of Mobile v. Kimball, 102 U. S. 691, 696, 697; Smith v. Alabama, 124 U. S. 45, 473; Second Employers Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

It would neither be instructive nor profitable to undertake to review the numerous cases in which the Supreme Court has upheld the exercise of this power. It may simply be admitted that they go the full length in sustaining legislation by Congress in regulating local conditions or activities which have the effect of directly interfering with interstate commerce so as to be an obstruction or burden thereon.

In Board of Trade v. Olsen, 262 U. S. 1, where the Grain Futures Act was involved, it was held that "whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

Here Congress has not declared any local activity or condition as constituting a burden upon interstate commerce. As is said in United States v. Ferger, 260 U. S. 199: "It follows that sales for future delivery on the Board of Trade [fol. 207] are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such *unless they are regarded by Congress from the evidence before it as directly interfering with interstate commerce so as to be an obstruction or burden thereon.*"

As was further said in the Olsen case: "In the Act we are considering Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render imperative for the protection of such commerce and the national public interest therein."

Here there is no such expression of judgment finding or will by Congress. There is not here shown any entry by Congress either directly or through its agency into the exclusive province of the State in dealing with intrastate activities except where those engaged in purely intrastate activities consent to the provisions of the code by subscribing thereto, which is not the case here.

There is not perceived in the terms of this Act any intention, express or implied, by Congress to invade the sphere of purely local action in aid of or to remove burdens or restrictions upon interstate commerce. In such connection it is interesting to note the observations of the present Chief Justice in an argument before the Federal Oil Conservation Board in 1926, when he was speaking in the capacity as counsel for his client, The American Petroleum Institute, and wherein he quotes the language of the Supreme Court as found in the Coronado case and the Oliver Mining Company v. Lord, supra, to show that oil production is not commerce and then proceeds as follows: "It may therefore be safely taken for granted that under the [fol. 208] powers to regulate commerce Congress has no constitutional authority to control the mere production of petroleum on lands (other than Indian lands) within the territory of a State. All plans for requiring unit operation or otherwise, which involved the assertion of such a power on the part of Congress do not require discussion. They proceed from an utterly erroneous conception of Federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government."

Further, he stated: "I am aware that it has been suggested that such Federal power to control production within the states might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare." (An argument made in this case in the brief of the Solicitor of the Department of Interior). The Chief Justice continuing said: "Reference is sometimes made in support of this view to the words of the preamble of the Federal Constitution. But as Story says 'The preamble never can be resorted to to enlarge the powers confided to the general government or any of its departments. It cannot confer any power per se; it can never amount, by implication, to an enlargement of any power expressly given.' " 1 Story on the Constitution, Sec. 462. And this statement was approved by the Supreme Court of the United States in Jacobsen v. Mass. 197 U. S. 11, 22.

"The suggestion to which I have referred is an echo of an attempt to construe Article I, Section 8, subdivision 1 of the Constitution of the United States, not as a power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general [fol. 209] welfare of the United States,' but as conferring upon Congress two distinct powers, to wit: (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that it might think necessary or enpedient for the common defense or the general welfare of the United States. Of course, under such a construction the government of the United States would at once cease to be one of enumerated powers and the powers of the states would be wholly illusory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907, 908; 1 Willoughby on the Constitution, sec. 22.) The government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the states respectively such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare."

The government claims that under a declared emergency powers of Congress are expanded beyond their extent under ordinary circumstances and in ordinary times, and relies upon the cases of Highland v. Russell, 279 U. S. 253; Block v. Hirsh, 256 U. S. 135; Brown v. Feldman, 256 U. S. 170; Wilson v. New, 243 U. S. 332; Chastleton v. Sinclair, 264 U. S. 543.

In each of the above cases the action complained of was predicated upon an actual existing power of government and the emergency was only the occasion for bringing the power into exercise.

However, as has been very aptly said by the Supreme Court in the recent case of Home Building and Loan Asso- [fol. 210] ciation v. John H. Blaisdell & Wife, 290 U. S. 255, "emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal government and its limitations of the powers of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been and always will be the subject of close examination under our constitutional system."

"While emergency does not create power emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.'" Wilson v. New, 243 U. S. 348.

By Section 9 (c) the President "is authorized to prohibit the transportation *in interstate and foreign commerce* of petroleum and the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable", etc.

By Section 10 (a) "The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purpose of this title."

Indulging as is indicated above, the violent presumption that Section 9 (c) is valid in the face of the complaint made [fol. 211] against it to the effect that it is an abdication by Congress of its function of legislating and an unconstitutional delegation of authority to the President of its power to legislate, the inquiry arises as to the validity of the regulations made pursuant to this provision. It might be said in passing that there cannot be perceived from this expression of Congress any expression of will or intent of its own, and that it prescribes no penalty for a violation of the Act, but that the penalty prescribed is for violation of any orders that the President might make under the Act and that it further provides that the President may terminate the same at any time he sees fit.

Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction that this provision of the Act is invalid by reason of its delegation to the Executive of legislative authority, yet conceding it for the purposes of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself. This is limited to the transportation in interstate and foreign commerce of petroleum and the products thereof, etc.

It has been repeatedly held that in order to subject one to inquisitions, visitations and interrogations by extrajudicial bodies for the purpose of obtaining information against them, statutory authority for such claim of right must be shown to plainly and definitely confer upon such bodies such authority. Overton Refining Company v. C. V. Terrell, et al., 459 in Equity in this court. Counselman v. Hitchcock, 142 U. S. 547. Interstate Commerce Commission v. Brimson, 154 U. S. 448. Harriman v. Interstate Commerce Commission, 211 U. S. 408.

[fol. 212] As there is nothing contained in the statute authorizing the action complained of on the part of the respondents, it is clear that such regulations requiring such reports and the going upon the property of the complainants by the respondents, gauging their tanks and digging up their pipelines are without authority of law.

But the respondents say that the regulations in question are: (1) reasonably necessary to carry out the purposes of the Act and (2) that they do not infringe upon constitutional rules, but there cannot be read into the Act any intention of Congress to invade the rights of the State to regulate matters of purely local concern and regulation such as the production of oil and the refined products thereof where they have no relation to and do not go into interstate commerce, and it is not competent for the Secretary of the Interior, however good his motives, to enlarge by regulation upon the provisions of the Act itself.

Since the Act in terms only authorizes the prohibition of the transportation in interstate and foreign commerce of petroleum and the products thereof; it certainly cannot be extended to cover by regulation those who are obviously not engaged in the transportation of such products in interstate or foreign commerce or engaged at all in interstate or foreign commerce.

The other provisions of Section 9 (c) relating to transportation in interstate commerce recognize the validity of State regulations and the action of the State regulatory body in fixing the amount of withdrawals and the amount to be produced. This in itself is a denial of any intention upon the part of Congress to grant to national officers the right to act in regard to the production of crude oil or the manufacture of its products.

[fol. 213] Such action by officers of the National government is obviously an indirection and evasion contrary to the terms of the Act itself in an attempt to regulate and control the production of oil and the manufacture of products therefrom, a matter committed solely to the discretion of the State.

As was said in Stafford v. Wallace, 258 U. S. 496, where the Act gave the Secretary of Agriculture a large measure of control over the stockyards of the country and which control extended to practically all the methods of doing business therein, even to the price to be charged for the services rendered in the stockyard. The Supreme Court said: "What there amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause. *And it is primarily for Congress to consider and decide the fact of the danger and meet it.* This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent." Here there has been not only no determination by Congress of a practice there threatens to obstruct or unduly to burden the freedom of interstate commerce except as it relates, if at all, to the transportation in interstate and foreign commerce of petroleum and its products. It has not considered and decided the fact of any other danger to or burden upon interstate commerce and the regulations of the Secretary of the Interior certainly cannot override and enlarge the determinations of Congress by mere regulation to the prejudice of the rights of the State over matters of purely local concern.

The case here is about the same as Stafford v. Wallace if, under the facts of that case the Secretary of Agriculture [fol. 214] had by regulation required that every domestic producer of livestock, engaged solely in intrastate commerce, give him information as to the kind and character, description and age, color and sex of the livestock so raised, something which obviously had no relation to the matter of local practice or condition which Congress was attempting to affect by regulation: then the situation there and here would be fairly comparable. Such a requirement would have had no reasonable relation to the expressed will of Congress and so here. The regulations of the Secretary of the Interior have no reasonable or any relation to the will of Congress expressed in this Act. To admit of the authority of the Secretary of the Interior to make such regulations as those involved here is to go in the face of the terms of the Act itself. Such an invasion of the rights of the States is not permissible in our dual form of Government.

The facts of this case clearly and obviously disclose that the regulations seek by indirection to evade constitutional limitations by superseding State authority to which the power is clearly committed to regulate the local production of crude oil and to supervise the manufacture of products therefrom.

As said in Boyd v. United States, 116 U. S. 616: "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.

"This can only be obviated by adhering to the rule that Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the Constitutional rights of the citizen and [fol. 215] against any stealthy encroachments thereon. Their motto should be obsta principiis."

As if apropos of the situation here presented, John F. Dillon, addressing himself to the constitutional provisions written for the protection of life, liberty and property, years ago said: "If there is any problem which can be said to be yet unsettled it is whether the bench of this country, State and Federal, is able to bear the great burden of supporting under all circumstances the fundamental law against popular or supposed popular demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary * * * unique in the history of the world * * * to support, maintain and give full effect to the Constitution against every act of the legislature or the Executive in violation of it. This is the great jewel of our liberties. We must not, 'like the base Judean, throw a pearl away richer than all his tribe.' This is the final breakwater against the haste and passions of the people. Against the tumultuous ocean of Democracy. It must at all costs be maintained." Dillons Laws and Jurisprudence of England and America, page 214.

The above conclusions obviate the necessity of discussion of the other constitutional questions raised.

A decree may be presented in accordance herewith.

[File endorsement omitted.]

[fol. 216] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 217] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7351

A. D. RYAN, S. D. BENNETT, J. HOWARD MARSHALL,
Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

Motion of Appellants for Supersedeas and Stay

MOTION FOR SUPERSEDEAS AND STAY AND AFFIDAVIT IN SUPPORT—Filed April 4, 1934

To the Honorables, the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Acting pursuant to the direction of the Solicitor General of the United States and the Department of Justice, come now the above named appellants, through their attorneys, Charles Fahy, J. Howard Marshall and Chas. I. Francis, and show unto Your Honors that on the 21st day of February, 1934, the Honorable Randolph Bryant, Judge of the United States District Court for the Eastern Dis-[fol. 218] trict of Texas, entered a decree granting a permanent and perpetual injunction in a certain cause entitled Panama Refining Company et al., plaintiffs, versus A. D. Ryan et al., defendants, in Equity Cause No. 635 and Consolidated Causes Nos. 636 and 640, then pending in said Court.

The District Court, by its decree, granted a permanent and perpetual injunction enjoining and restraining A. D. Ryan, Special Agent of the Division of Investigations, Department of the Interior of the United States, S. D. Bennett, United States Attorney for the Eastern District of Texas, and J. Howard Marshall, Special Assistant to the Attorney General of the United States, from enforcing any Rule or Regulation designated by the Secretary of the Interior under the National Industrial Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, of the transportation of petroleum or the products in intrastate commerce, and enjoining said parties, their servants, agents and employees and anyone else purporting to act under the authority of the National Industrial Recovery Act or any Rule or Regulation promulgated thereunder from going upon or about the premises of the complainants or in anywise interfering with them or molesting them in the conduct of their business by reason of the provisions of the National Industrial Recovery Act or Regulations promulgated thereunder. Appellants urge below and again urge here that the District Court erred by the reasons specifically set forth in the Assignment of Errors. Appellants, pursuant to the direction from the Solicitor General of the United States and the Department of Justice, have taken appeal [fol. 219] from said decree and permanent injunction and the same has been duly allowed by said District Judge.

On the 26th day of March, A. D. 1934, your appellants petitioned the District Court in said cause for a supersedeas and stay of said decree and injunction pending disposition of this appeal and the District Court denied said supersedeas and stay of the injunction.

Unless this Honorable Court grants a supersedeas in this cause and stays all proceedings under or by virtue of said order, there will be grave and irreparable injury and damage done to said appellants and to the producers and refiners of petroleum and the products thereof in the State of Texas and elsewhere throughout the United States, and to the Secretary of the Department of the Interior in his administration of Section 9 (c) of the National Industrial Recovery Act. The effect of the decree and the injunction will be to bring to a complete halt the Government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States, and a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States. One of the cornerstones of the present national program is in virtual suspension and the conservation of a natural resource essential to the national defense is seriously imperiled.

The appellants further state that in their opinion the order of said District Court granting said permanent injunction should and will be reversed, or, at least, that it [fol. 220] appears that there is reasonable doubt as to whether the order of said District Court should be sustained.

Wherefore, appellants pray this Honorable Court to enter an order of supersedeas, without bond, staying the permanent injunction granted by the decree entered in this cause on February 21, 1934, and, commanding said District Court, its Judge, Clerks and Marshals to refrain from taking or suffering to be taken before them any further proceedings pursuant to, or by virtue of, said decree granting said injunction herein, until the hearing and decision by this Court of the said appeal and the return of the mandate thereon; and ordering that good and sufficient service of such order of this Court shall be deemed made by lodging in the office of the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division thereof, a true copy of this motion and the order of the Court entered thereon; and for such further relief as to this Court may seem proper.

Charles Fahy, John F. Davis, Chas. I. Francis, Special Assistant to the Attorney General, Attorneys for the Appellants, 617 Citizens Nat. Bank Bldg., Tyler, Texas.

[fol. 221] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. —

A. D. RYAN et al., Appellants,

vs.

PANAMA REFINING COMPANY et al., Appellees

No. —

ARCHIE D. RYAN et al., Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUPERSEDEAS AND STAY ORDERS

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared J. R. Cannon, known to me to be the identical person whose name is subscribed to this affidavit and who being by me duly sworn on oath deposes and says:

[fol. 222] My name is J. R. Cannon. I am Acting Special Agent in Charge of the Division of Investigations of the Department of the Interior at Tyler, Texas, and am particularly familiar with conditions in the East Texas oil field and generally with conditions in the oil industry throughout the United States. I am also familiar with the records and files of the Division of Investigations at Tyler, Texas, in which are reflected East Texas oil field conditions since the Tyler office was opened in August of 1933.

Overproduction in the East Texas field at this time amounts to approximately 75,000 barrels per day. This excess oil and its refined products jeopardize the interstate petroleum market throughout the Midcontinent and Eastern Coast area. This figure represents approximately a one hundred per cent increase in overproduction since the decision of the United States District Judge in the Panama and Amazon cases and in my opinion is directly attributable to the effect of these decisions in preventing effective Federal regulation, as the injunctions in these cases apply to approximately one hundred and forty-four producing and refining properties which constituted a substantial per cent of the total sources of illegally produced oil and refined petroleum products.

In my opinion the State authorities alone and unsupported by the Federal authorities cannot curb this illegal produc-[fol. 223] tion under conditions that now exist.

J. R. Cannon, Acting Special Agent in Charge.

Subscribed and sworn to before me this 31st day of March, A. D. 1934. Mrs. H. I. Griffies, Notary Public, Smith County, Texas. My commission expires June 1, 1935. (Seal Notary Public, County of Smith, Texas.)

[fol. 224] No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL

versus

PANAMA REFINING COMPANY et al.

ORDER STAYING DECREE PENDING APPEAL

Extract from the Minutes of April 4th, 1934

Upon application of appellants, it is ordered that pending the appeal herein the decree of the district court, insofar as it enjoins inspections and the furnishing of reports of oil produced and refined as required by the provisions of law and regulations complained of, be and the same hereby is stayed.

[fol. 225] No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL

versus

PANAMA REFINING COMPANY et al.

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 2nd, 1934

On this day this cause was called, and, after argument by Douglas Arant, Esq., Special Assistant to the Attorney General, and Chas. I. Francis, Esq., Special Assistant to the Attorney General, for appellants, and F. W. Fischer, Esq., for appellees, was submitted to the Court.

[fol. 226] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL,
Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

Before Bryan, Foster and Sibley, Circuit Judges

OPINION OF THE COURT—Filed May 22nd, 1934

SIBLEY, Circuit Judge:

This case was tried in the District Court and in this court along with that of Amazon Petroleum Corporation, et al., vs. Ryan, et al., the appeal in which has just been disposed of. The cases are similar except that this embraces among its complainants certain refiners of oil who ship some of their products in interstate commerce and who attack also Regulation V of the Secretary of the Interior which provides for [fol. 227] reports to be made by refiners. The present decree enjoined the enforcement of that Regulation also. What was said by us in the opinion in the case of Amazon Petroleum Corporation applies here, and for the reasons there set forth we reverse the decree in this case and remand the cause with direction to dismiss the bill.

[fol. 228] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER,
Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

Before Bryan, Foster and Sibley, Circuit Judges

OPINION OF THE COURT—Filed May 22nd, 1934

SIBLEY, Circuit Judge:

The Amazon Petroleum Corporation, with other producers of petroleum in the East Texas field, brought a bill to enjoin the Railroad Commission of Texas and other officers of the State from enforcing orders of the Commission which greatly restricted the production of oil; and at the same time to enjoin Ryan, an agent of the Department of the Interior of the United States, and the United States District [fol. 229] Attorney and the Marshal from enforcing certain portions of the National Industrial Recovery Act and of the Regulations and Code for the Petroleum Industry promulgated thereunder. A court of three judges having severed the two causes of action and taken jurisdiction of that to enjoin the orders of the Railroad Commission, upheld those orders. Amazon Petroleum Corporation vs. Railroad Commission, 5 Fed. Sup. 633. The cause of action against the federal officers was tried by the District Judge and a final decree rendered by which the defendants were perpetually enjoined from enforcing Section 4 of Article III of the Petroleum Code and Regulation IV, and from going on the property of the complainants by virtue of them, and from instituting civil actions or criminal prosecutions for violation of them. 5 Fed. Sup. 639. This decree is now under review by appeal.

Article III of the Petroleum Code is entitled, Production. Section 1 relates to limiting imports of petroleum and its products. Section 2 relates to withdrawals from storage. Section 3 provides for a Federal Agency designated by the President to make estimates of required domestic production and under approval of the President to allocate it equitably among the states. Sec. 4 reads: "The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which [fol. 230] event it is hereby agreed that such quotas shall become operating schedules for that State. If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code." The attacked Regulation IV was made by the Secretary of the Interior by virtue of the delegation to him of the Presidential power by an Executive Order of July 14, 1933. In substance the Regulation requires every producer of petroleum to file with the Department of the Interior each month a sworn statement of the allowable production fixed by the State Agency for each of his properties and wells, the daily production from each and the place of storage, and a declaration that none of the petroleum produced or shipped was in excess of the amount permitted by the state. Regulation VII requires that adequate books and records of all transactions in production and transportation of petroleum be kept and maintained available to inspection by the Department of the Interior. No provision is called to our attention which specifically authorizes the inspection of oil properties and storage tanks. The evidence is without substantial conflict, and shows that the complainants are only producers of crude petroleum, neither selling it for delivery in other states or countries nor transporting it thither, but disposing of it on their properties in Texas. The Texas Railroad Commission has adopted the allocation for the state made under Petroleum Code, Article III, Section 3, and its orders have reduced the allowable production of complainants' wells to a small percentage of their capacity. The defendants are demanding the reports required by Regulation IV, are inspecting the books and the properties of the complainants and gauging their storage tanks, and threaten and intend to prosecute them for violation of the [fol. 231] Regulations and Code. Some of the complainants have in fact been producing and disposing of petroleum in excess of that allowable. The East Texas oil field is the largest in the country and capable alone of producing the petroleum marketable in the United States. It has most of the flowing wells from which oil is most cheaply produced. Production in excess of market demand greatly affects the market price, which has often fallen below the cost of production even in Texas, and sometimes as low as ten cents per barrel at the well. Eighty-five per cent of the oil produced in Texas and its products is transported into other states, and greatly affects the oil business in all states. Eighteen other states produce petroleum also, of which California and Oklahoma are capable of producing amounts comparable with those producible in Texas, but in other states the wells are less bountiful and more costly in operation, but yield a very large aggregate production and represent a huge investment. Petroleum is an exhaustible national resource, very necessary in the arts of peace and war, of importance to all parts of the country and incapable of satisfactory substitution. Its production is a major industry and its distribution is necessarily carried on largely in interstate and foreign commerce since over half of the states produce none. It is peculiar in its transportation and handling, because this is most largely done by means of pipe lines in which the oil of many producers is often indistinguishably mingled on the way to a refinery, to storage tanks, or in transportation to other states and countries. In the oil fields these pipe lines are a complicated and connected system, often underground, with unobservable ramifications. Sometimes bypasses are employed to run oil secretly around the place for its measurement by the mere opening of a valve. By these means and others oil in excess of what is allowable is produced and shipped in interstate commerce in large [fol. 232] quantities, not only defeating the attempted restrictions but demoralizing the general markets and often cheating those who have royalty interests in what is produced. If the transportation of excess oil in interstate commerce is to be successfully controlled, the system of reports and records required and the inspections practiced are both reasonable and necessary.

The main contentions made by appellants or by appellees are: 1. That the Secretary of the Interior is an indispensable party to the attack on his Regulations. 2. That the production of oil cannot be regulated by Congress and the provisions of the Act and of the Regulations and of the Code dealing with it are unconstitutional. 3. That the Regulations and the Code exceed the authority given by the Act. 4. That if Congress could itself have made the attacked provisions it could not delegate to the President and he could not delegate to others the power to make them. 5. That the reports and inspections are searches and compulsions to self-incrimination forbidden by the Constitution.

1. The Secretary of the Interior is not personally doing or threatening the acts of trespass and of prosecution which are sought to be enjoined. Although the actors may be authorized and incited by him so that he would be a proper co-defendant if he were within the court's reach, the court has power to stop the trespassing by those within its jurisdiction irrespective of their claim that they are acting for others. Osborne vs. Bank of United States, 9 Wheat. 738; State of Colorado vs. Toll, Supt., 268 U. S. 228. This is not a bill to cancel the Secretary's Regulations, but only to test their efficacy to protect defendants in their alleged trespasses against complainants' rights. There is no more need to make the Secretary a party for this purpose than to make the President a party because he promulgated the Code or the Congress because it enacted the statute.

[fol. 233] 2. The National Industrial Recovery Act, Section 303, provides: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby." We are therefore called on to deal only with those provisions of the Act directly involved in this case, and with their application to the circumstances here appearing. A more general discussion of the Act is both unnecessary and inappropriate. Section 9 is devoted to oil regulation. Paragraph (c) reads: "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, committee, officer or other duly authorized agency of a state. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000.00 or imprisonment for not to exceed six months, or both." The prohibition thus authorized was made by the President on July 11, 1933. On its face it is a regulation of transportation in interstate and foreign commerce, and within that familiar power of Congress. But because it is expressly based on and is designed to aid a restriction on production or withdrawal from storage made by valid state law or regulation it is said to be in reality a regulation of production within the state, which is not interstate or foreign commerce. Oil production is either mining or manufacture. Neither the one nor the other is ordinarily within the power of Congress to regulate within a state. Kidd vs. Pearson, 128 U. S. 1; Hammer vs. Dagenhart, 247 U. S. 251; United Mineworkers vs. Coronado Coal Co., 259 U. S. 345; Oliver Iron Mining Co. vs. Lord, 262 U. S. 172; Cham- [fol. 234] plain Refining Co. vs. Corporation Commission, 286 U. S. 210; Utah Power & Light Co. vs. Pfost, 286 U. S. 165. It may be that under peculiar circumstances, such for example as are here shown to exist in the relation of oil production in Texas to commerce in oil with and among the other states, such a burden on or interference with interstate commerce may exist as to justify Congressional action, as in the case of intrastate rates which injuriously affect interstate commerce, Houston, E. & W. T. R. R. Co. vs. United States, 234 U. S. 342; Wisconsin R. R. Commission vs. C., B. & *R*. R. R. Co., 257 U. S. 563; Florida vs. United States, 282 U. S. 194; or local stockyard practices, Stafford vs. Wallace, 258 U. S. 495, or selling of grain on the exchanges. Chicago Board of Trade vs. Olsen, 262 U. S. 1. Such a question may arise under the provisions of the Petroleum Code, Article III, Section 4, relating to the fixing of production quotas, but in the provision of the Act now before us there is no such question. The regulation of production is assumed to have been validly made by the state, and the federal regulation is actually only of interstate and foreign commerce, adjusted to aid and not to thwart the state action. Such cooperation between state and central government is not constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate. Thus when some of the states [fol. 235] in the exercise of their general police power sought to control the transportation and sale of intoxicating liquors within their borders, Congress with a plain purpose to make the state regulation more effective first made such liquors subject to state laws on arrival, and later forbade them to be transported in interstate commerce into such a state. In Re Rahrer, 140 U. S. 545; Clark Distillery Co. vs. Western Maryland R. R. Co., 242 U. S. 311. So the states in the exercise of their police power regulate the stealing of automobiles, but Congress supplementarily forbids and punishes the interstate transportation of stolen cars. Brooks vs. United States, 267 U. S. 432. The Lottery Act supplements in the federal domain a police power indubitably residing in the states. Champion vs. Ames, 188 U. S. 321. Other instances might be cited. The provision of the National Industrial Recovery Act under discussion is not unconstitutional because it operates and was intended to operate so as to make more effectual valid state action with reference to oil production.

Nor is it unconstitutional because its effect is temporarily to restrict the volume of interstate and foreign commerce in oil. No doubt in general there should be free trade among the states, but that is not to say that laissez faire must have full scope. The power to regulate interstate commerce is given to Congress in identical terms with the power to regulate foreign commerce. The regulation of foreign commerce for the good of the whole country by severe restrictions on immigration, and by protective tariffs on goods, and by embargoes, is a part of our history and may be independent of any inherent objectionableness in the persons or the articles affected. A similar power, with some special restrictions, exists as to interstate commerce and may be exercised not only to exclude harmful articles but to better the health and stability of such commerce as a whole. Regulation by prohibition was upheld in the cases [fol. 236] above cited. What a centralized constitutional government may do in the way of regulation of trade or commerce our dual system can accomplish by the cooperation of its state and central governments.

The contention is also made that the effect of Sect. 9(c) of the statute is to take property without due process of law. Of course regulations of commerce, whether by state or central government, must not offend other provisions of their respective constitutions. But by hypothesis of the statute the regulation by the state must be a valid one. Validity has been adjudicated in this case. The prohibitions on this point of the state constitution and of the Fourteenth Amendment with reference to the state are so similar to the prohibition of the Fifth Amendment as to the central government that if the state regulation be valid the assisting federal statute cannot well offend at this point.

3. The Act, Sect. 10(a), authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and provides punishment for their breach. Regulations IV and VII providing for monthly statements and for books and records subject to inspection are clearly shown to be necessary in order to render effectual the prohibition of the statute against shipping excess petroleum in interstate and foreign commerce. Excess oil cannot be distinguished after it is mingled with other oil either in the storage tank, the pipe line or the tank car. If it is produced it can be traced into interstate commerce only by producers' reports and such

inspections as are provided for. The fact that the producers themselves do not engage in intertsate commerce does not render it less necessary that they furnish information. Those who buy from them probably could not tell whether what they bought and were about to ship was or [fol. 237] was not excess oil. The inspection of books is only a check on the truthfulness of the reports. The attacked regulations are supported as reasonably necessary to the purposes of the Act.

The Code provision, Art. III, § 4, adopted under Sect. 3 of the Act, goes further than the provisions of Sect. 9(c) heretofore considered because it deals directly with production. These complainants have not consented to the Code and are bound by it only if it has the force of law. The Code provides for an ascertainment by a Federal Agency of the required domestic production of crude oil and its products, and for its equitable allocation among the several states by Presidential approval; and if the allocation is not regarded by the state agencies by making a subdivision of it among the pools, leases and wells within the state so that an excess production results, the President may either regulate shipments out of the state so as to equalize such shipments or may himself make and recommend to the state agencies such quotas, which shall then become operating schedules for that state. Production by any person in excess of the quota assigned to him is declared an unfair trade practice and in violation of the Code. Since production of excess oil and not its shipment in interstate or foreign commerce thus constitutes violation of the Code, it is said that the commerce power of Congress is exceeded. In this case the State of Texas has fixed its own quotas, so that federal power to fix them is not involved. We do not inquire whether the production of crude oil intended for shipment interstate or foreign commerce constitutes such a threat to do that act or such a temptation to it as to be capable of restraint in order to make effectual the prohibition of shipments in such commerce, in the manner in which the possession of intoxicating liquors was held to be regulable by Congress although the sale and transportation only of them was within Con- [fol. 238] gressional power. For by reference to Sect. 5 of the Act it appears that the sanctions for violating the Code are but three. Paragraph (b) declares a violation to be an unfair method of competition within the meaning of the Federal Trade Commission Act. If that sanction be an unlawful one, and should be sought to be applied against complainants before the Federal Trade Commission, they have their remedy in that proceeding. Paragraph (c) provides for injunction proceedings by the District Attorney to prevent violation, and a complete remedy against wrong is available there. Paragraph (f) provides a sanction by criminal prosecution, but only when the violation is "in any transaction in or affecting interstate or foreign commerce." An indictment or information could not stop at alleging the production of excess oil, but would have to allege with appropriate fullness that it was in a transaction in interstate commerce or affecting it. This sanction is thus tied to and seemingly not intended to exceed the commerce power of Congress. Each such criminal case would depend on its own facts. The provision of the Code thus enforced does not appear to be unconstitutional. Whether any complaint at any time has violated it is more appropriately to be tried in a prosecution of him than in this composite suit in equity. We may say of all three sanctions that an adequate remedy against abuse is afforded in the proceedings indicated by the statute for their respective enforcement, so that a remedy in equity by injunction may not be had.

4. The delegation to the President of power to put the prohibition of Sect. 9(c) into effect is not seriously attacked. Such a thing has been often done under varying forms of language, as appears by the review of statutes in Field vs. Clark, 143 U. S. 649. See also Hampton vs. United States, 276 U. S. 394. But the regulations promulgated by the Secretary of the Interior and the Code approved by the President are strongly attacked as an im- [fol. 239] proper delegation of legislative power. We have shown the regulations in question to be reasonable and within the Act if made by the President. The Act in Sect. 2(b) expressly authorized the President to appoint some one else to exercise any function or power given him, and he appointed the Secretary to exercise this function. It is the case of a legislative agent authorized to appoint a subagent. Congress, well knowing that the President could not personally do all that was put on him, authorized him to select some one to attend to the business instead of

itself appointing such a one. We know of nothing to forbid it. The regulations made by the Secretary stand as though Congress had directly authorized him to make them.

The Code is a novelty in legislation. Its making was not a delegation by Congress of a power of legislation to the various trade or industrial groups mentioned in Sect. 3[*1]. The groups could really do nothing but advise the President just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that gives it force. Congress puts sanctions behind either which are intended to make it enforceable law. Whether the general purposes of the Act stated in Sect. 1, together with the requisites of a Code set out in Sect. 3 or elsewhere are [fol. 240] statements of an intelligible legislative plan sufficient to be filled out and executed by a commission after hearing those to be affected, as for instance when a legislature orders just and reasonable rates to be established on railroads and authorizes a commission to enquire into and fix them, is a question we need not broadly answer.[*2] The particular policy and plan disclosed in Sect. 9 to regulate excess oil by debarring it from interstate commerce is entirely clear. The regulations and Code provisions which are here in issue do not go beyond that purpose and plan.

[*1] Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislatvie power. St. Louis & Iron Mountain R. R. Co. vs. Taylor, 210 U. S. 281. By R. S. § 2324 Congress in providing for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. Erhart vs. Boaro, 113 U. S. 527; Butte City Water Co. v. Baker, 196 U. S. 119.

[*2] While Congress cannot abdicate legislative power, it may make large delegations of it, always retaining the right of control and of reassumption. While the Constitution was being written the then Congress on July 13, 1787, made the Ordinance for the Government of the Northwest Territory, in which very broad legislative powers were delegated.

5. The regulations touching reports and inspection of records are not in violation of the prohibition of the Fourth [fol. 241] Amendment forbidding unreasonable searches or of the Fifth Amendment guaranteeing that no person shall be compelled in any criminal case to be a witness against

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Similar delegation occurred when the Louisiana Territory was purchased. Sere vs. Titot, 6 Cranch. at page 337. Legislative power appropriate for a municipality was delegated with reference to the District of Columbia. Stoutenberg vs. Hennick, 129 U. S. 141. Governments with legislative powers have been established by Congress for other territories and insular possessions. See United States vs. Heinszen, 206 U. S. at page 385. Broad powers given the Secretary of Agriculture to make regulations touching forest reserves, whose breach was criminally punishable, were upheld in United States vs. Grimaud, 220 U. S. 506. In all these cases matters within the states were not directly affected. Such matters ought no doubt to be kept more directly in Congressional control; but even so, practical necessity has required of Congress more and more to act through agents in fixing legislative details. The Interstate Commerce Commission is an outstanding example. One of its broadest discretionary powers in reference to the long and short haul clause was upheld as validly delegated in United States vs. Acheson, T. & S. F. R. R. Co., 234 U. S. 476. The Secretary of War is validly empowered to require alteration or removal of bridges which unreasonably obstruct navigable waters. Union Bridge Co. vs. United States, 204 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177. The Federal Reserve Board was validly authorized to empower individual National Banks to act as trust companies. First National Bank Bay City vs. Fellows, 244 U. S. 416. The delegation to the President of power to alter tariffs within limits and for purposes disclosed was held not unconstitutional in Hampton vs. United States, 276 U. S. 394. We have discovered no delegation which Congress has plainly made that has been refused recognition by the Supreme Court.

himself. A producer of oil does not operate under any right or license derived from the federal government and is not subject to such rigorous treatment as if he did. But he is a citizen within the protection of that government and owes it a citizen's duty to assist in the enforcement of its laws. The object of the reports and the inspection of books is to ascertain the existence and the disposition of excess oil in order that its interstate and foreign transportation may be stopped. The government has a right to know about this, just as it has a right to know what the citizen's income is that it may be taxed. Presumably no crime has been committed by producer or taxpayer. No criminal case is pending, and the immediate purpose is information and not prosecution. The fact that the report is required greatly tends to keep producer or taxpayer from committing a crime that would be disclosed thereby. But if he has committed a crime and is entitled to withhold evidence of it, he should at the proper time and on the specific ground that disclosure would tend to criminate him, assert the right to withhold the particular evidence. Because such a thing conceivably might occur is no reason to upset laws and regulations which are generally useful and necessary in the public business.

The inspection of properties and tanks and pipe lines does not seem to be expressly authorized by any regulation. It may be a civil trespass when not consented to, even though it is not a search in the constitutional sense when the premises are open to free entry. See Hester vs. United States, 265 U. S. 57; United States vs. Western & Atlantic Railroad, 297 Fed. 482. But if a trespass, there is no show- [fol, 242] ing of irreparable damage or insolvency of the trespassers, and no occasion for an injunction on that account.

We are of opinion that the injunction ought not to have been granted, and the decree is reversed and the cause remanded with direction to dismiss the bill.

[fol. 243] No. 7351

A. D. Ryan, S. D. Bennett and J. Howard Marshall

versus

Panama Refining Company et al.

Judgment

Extract from the Minutes of May 22nd, 1934

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction to dismiss the bill.

[fol. 244] In the United States Circuit Court of Appeals, Fifth Circuit

No. 7351

A. D. Ryan et al., Appellants,

vs.

Panama Refining Company et al., Appellees

Application of Appellees for Stay of Mandate

Motion and Order Staying Mandate—Filed June 7, 1934

Come now the appellees in the above entitled and numbered cause, and would show to the court that they will immediately, and as soon as the clerk of this court can prepare a transcript of the proceedings in this cause, apply to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered herein by this honorable court, wherein it reversed the judgment of the district court and vacated and set aside the injunction granted by the district court in favor of appellees and against appellants and ordered a dismissal of appellees' bills of complaint.

[fol. 245] Appellees would further show that while this cause was pending before this honorable court and before its determination thereof, this court entered an order staying the injunction granted appellees by the district court, in so far as it enjoined inspection and the furnishing of reports of oil produced and refined, as required by the provisions of the law and regulations complained of. Therefore, the only portion of the decree of the district court that has not already been stayed by this court is that part wherein appellants are enjoined from proceeding with the criminal prosecutions already instituted against appellees, and from instituting additional criminal prosecutions against appellees because of their failure to comply with the regulations that are attacked in this suit.

Appellees would further show to the court that there is now pending before the Supreme Court of the United States in the cause of United States of America, Appellant, vs. J. W. Smith et al., Appellees, and numbered No. 869 on the docket of said court, the question of whether one may be subjected to criminal prosecution for failure to comply with the identical regulations that are attacked in this suit; and the determination by the Supreme Court of the United States of that question in said cause will be determinative of the question as to whether the appellees in this case may be subjected to criminal prosecution for failure to comply with the regulations attacked herein.

[fol. 246] Appellees would further show to the court that they believe that if the mandate of this court, vacating the injunction of the district court, is not stayed, the appellants will immediately proceed with said criminal prosecutions, as well as institute other criminal prosecutions because of the failure of appellees to comply with the attacked regulations before and after the granting of the injunction against them in the trial court, notwithstanding the question of the appellees' criminal liability for failure to comply with said regulations is now pending before the Supreme Court of the United States and set for submission in October, 1934.

Wherefore, because of the premises, appellees pray that this honorable court stay its mandate for such time as will enable the appellees to apply to the Supreme Court of the

United States for a writ of certiorari to review the judgment of this court, and if appellees file such application with the clerk of said court within such time, then that said mandate be stayed until this cause is determined by said court.

Respectfully submitted, F. W. Fischer, Tyler, Texas, Attorney for Appellees.

[fol. 247] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

On consideration of the application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 7th day of June, 1934.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 248] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 217 to 247 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7351, wherein A. D. Ryan, S. D. Bennett and J. Howard Marshall are appellants, and Panama Refining Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 216 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 7th day of June, A. D. 1934.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 249] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,763. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 135. Panama Refining Company et al., Petitioners, vs. A. D. Ryan, S. D. Bennett and J. Howard Marshall. Petition for a writ of certiorari and exhibit thereto. Filed June 29, 1934. File No. 135, O. T., 1934.

[illegible]

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

[illegible] CORPORATION, [illegible] [illegible] BOASE, ET AL., PETITIONERS,

vs.

[illegible] S. D. BENNETT AND [illegible] [illegible]

[illegible] CERTIORARI TO THE [illegible] CIRCUIT COURT OF APPEALS FOR THE [illegible]

[illegible]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION, BARNEY COCKBURN, E. J. BOASE, ET AL., PETITIONERS,

vs.

ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity

No. 652

Amazon Petroleum Corporation et al., Complainants,

vs.

Railroad Commission of Texas et al., Defendants

Bill in Equity—Filed Oct. 27, 1933

The Amazon Petroleum Corporation is a corporation organized and existing under the laws of the State of Delaware. It is qualified to do business in the State of Texas. Its office and principal place of business is located in [fol. 3] Henderson, Rusk County, Texas. The complainants Barney Cockburn and E. J. Boase are each citizens and residents of the State of Oklahoma, temporarily residing in Rusk County, Texas. Complainant Charles M. Cope is a resident of Kilgore, Gregg County, Texas. Complainant W. C. Turnbow Petroleum Corporation is a corporation organized and existing under the laws of the State of Colorado, duly qualified to do business in Texas. Its office and principal place of business is at Longview, in Gregg County, Texas.

The defendant Railroad Commission of Texas is a body politic, created by the laws of the State of Texas, with its principal office in Austin, Texas; the defendants Lon A. Smith, C. V. Terrell and E. O. Thompson are the duly elected, qualified and acting members of said Commission, Lon A. Smith residing in Henderson, Rusk County, Texas; C. V. Terrell residing in Austin, Travis County, Texas, and E. O. Thompson residing in Amarillo, Potter County, Texas. The defendant James V. Allred is the duly elected, qualified and acting Attorney General of the State of Texas. The defendant H. H. Wellborn is the duly elected, qualified and acting District Attorney of Rusk County, Texas, residing in Henderson, Texas. The defendant Milton Molhusen is the duly elected, qualified and acting District Attorney of Gregg County, Texas, residing in Longview, Texas. (The above named defendants for convenience will hereinafter sometimes be referred to as State officers.) The defendant Nat Gentry, Jr., is the duly elected, qualified and acting County Attorney of Smith County, Texas, residing in Tyler, Texas. The defendant Archie D. Ryan is Special Agent in Charge of Division of [fol. 4] Investigation of the United States Department of the Interior, and is a non-resident of the State of Texas, temporarily residing at Tyler, in said State. The defendant J. Howard Marshall is Special Assistant to the United States Attorney General, and is a non-resident of the State of Texas, temporarily residing at Tyler, in said state. The defendant S. D. Bennett is United States District Attorney, and resides at Beaumont, Texas. The defendant Phil E. Baer is United States Marshal, and resides at Paris, Texas. (The above named defendants for convenience will hereinafter sometimes be referred to as Federal officers.)

House Bill No. 5755, being Public Act No. 67, passed by the 73rd Congress of the United States, and approved by the President June 16, 1933, styled Federal Industrial Control Act, will for convenience be hereinafter referred to as the National Recovery Act, or NRA. Title 102 of Texas Civil Revised Statutes, with amendments thereto, will for convenience be hereinafter referred to as the Conservation Act.

This is a suit of a civil nature, as between each of the complainants and the defendants, arising under the laws and Constitution of the United States, and the matter or amount in controversy, as between each of the complainants and defendants, exceeds, exclusive of interest and costs, the sum of three thousand dollars.

The complainants, for their several and separate causes of action against the defendants, allege as follows:

I

The Amazon Petroleum Corporation is the owner of oil and gas mining leases covering the following described [fol. 5] lands situated in the State of Texas, to-wit: 4.43 acres out of T. O. Wright Farm, in Juan Vargas Survey, Smith County, Texas, on which there are two oil wells, each capable of producing 5,000 barrels of oil per day; 3¾ acres out of W. D. Peterson Farm, in Jacob Lewis Survey, Rusk County, Texas, on which there is one oil well, capable of producing 4,000 barrels of oil per day; 1.56 acres known as the Carlisle M. E. Church property in J. B. Cadena Survey, Rusk County, Texas, on which is located one oil well, capable of producing 3500 barrels of oil per day; 4⅔ acres of the E. J. Woodrum land in M. J. Pru Survey, Rusk County, Texas, known as the Afton Thrash and J. C. Crossman lease, on which is located one oil well, capable of producing 3500 barrels of oil per day.

The complainants Barney Cockburn and E. J. Boase are the joint owners of oil and gas mining leases covering the following described lands situated in the State of Texas, to-wit: 12 acres of the A. Thrash Farm, in the E. Collard Survey, of Rusk County, Texas, on which is located two oil wells, having an estimated capacity of approximately 10,000 barrels of oil per day; 52 acres of the Lula Jackson Farm, in the E. Daniels Survey, of Smith County, Texas, on which is located one oil well, having an estimated capacity of approximately 10,000 barrels of oil per day; and 45 acres of the Amanda Green Farm, in the M. Hussner Survey, Smith County, Texas, which has not been developed yet for oil or gas, but which these complainants are preparing to drill two wells on.

The complainant Charles M. Cope is the owner of oil and [fol. 6] gas mining leases covering the following described lands situated in the State of Texas, to-wit: West 4 acres of 5 acre tract on C. H. Hedge Farm, J. C. Barnett Survey, Rusk County, Texas, on which is located one well, capable of producing approximately 5,000 barrels of oil per day; and the northwest ten acres of F. A. Taylor 103 acre tract in the J. C. Barnett Survey, Rusk County, Texas on which is located one oil well, capable of producing approximately 5,000 barrels of oil per day.

The complainant W. C. Turnbow Petroleum Corporation is the owner of oil and gas mining leases covering the following described lands situated in the State of Texas, to-wit: 2 acres, known as the Florence lease, out of the Mary Van Winkle Survey, Gregg County, Texas, on which is located one oil well capable of producing approximately 9600 barrels of oil per day; a town lot in the City of Kilgore, Texas, known as the Heard lease, adjoining the Heard Hotel, on which is located one oil well, capable of producing approximately 9600 barrels of oil per day; a town lot in the City of Kilgore, Texas, known as the Lacy lease, on which is located one oil well, capable of producing approximately 11,500 barrels of oil per day; 60 acres in the I. Baity Survey, Gregg County, Texas, known as the Dickson lease, on which is located one oil well; capable of producing approximately 6,000 barrels of oil per day; Elder B. lease, containing 2.75 acres of land, in the Mary Van Winkle Survey, Gregg County, Texas, on which is located one oil well, capable of producing approximately 9,600 barrels of oil per day; Elder A. lease, containing 4.47 acres of land, in the Mary Van Winkle Survey, Gregg County, Texas, on [fol. 7] which is located one oil well, capable of producing approximately 10,000 barrels of oil per day; 16.36 acres of land, in the Dolores Sanchez Survey, Gregg County, Texas, known as the McKinley lease, and on which is located one oil well, capable of producing approximately 15,600 barrels of oil per day; 20 acres in the William Castleberry Survey, Gregg County, Texas, known as the Pearsons lease, on which is located two wells, capable of producing approximately 18,000 barrels of oil per day each; 6 acres, in the Dolores Sanchez Survey, Gregg County, Texas, known as the McGrede lease, on which is located one oil well, capable of producing approximately 15,000 barrels of oil per day; 1.97 acres, Mary Van Winkle Survey, Gregg County, Texas, known as the Knowles lease, on which is located one oil well, capable of producing approximately 10,000 barrels of oil per day.

II

Under and by virtue of the leases owned by the complainants as aforesaid, they and each of them are entitled to the exclusive control and possession of their said separate properties, and have the absolute right to produce therefrom all of the oil and gas which said properties are capable of producing, and the wells located on said properties are capable of producing, without waste, and without injury of any kind, at least one-half of their capacity, and these complainants have a market demand for quantities of oil far in excess of the amounts which they are allowed to produce under the acts and orders of the defendants hereinafter complained of, and were it not for such [fol. 8] acts and orders of the defendants, these complainants could produce, handle and dispose of large quantities of oil which they are being deprived of producing by reason of such acts and orders.

III

In doing the acts and things and carrying into effect the orders hereinafter complained of, the state officers purport to be acting under and by authority of the Conservation Act of the State of Texas, and also under and by virtue of authority of the National Recovery Act. The Federal officers purport to be acting under and by authority of the National Recovery Act, but these complainants and each of them allege that all of said defendants are acting without any authority whatsoever, and that they are mere trespassers in enforcing or attempting to enforce said orders and in doing the acts and things hereinafter complained of.

IV

Beginning with the discovery and bringing in of the East Texas oil field, the Railroad Commission of Texas, under pressure from a major part of the oil industry, inaugurated a plan and program of "proration", the purpose of which was and is to curtail the production of oil in the State of Texas to such an extent as to create an artificial demand therefor, their objective being to reduce the supply below the actual consumptive demand with a view of creating and maintaining a high price for crude oil. To obtain this objective, they entered into an agreement with the Conservation boards of the various oil producing states, whereby [fol. 9] they agreed to hold the output of crude petroleum in Texas to approximately 900,000 barrels per day. Since that time they have from time to time made, issued, promulgated and put into effect so-called proration orders, whereby they have prohibited or attempted to prohibit in excess of that amount being produced in the State of Texas, and in order to accomplish that purpose they have from time to time restricted the production from each of the complainants' wells to whatever extent has been necessary to hold the production of the state to approximately that figure, and in doing so have disregarded the producing capacity of the wells, the market outlet, the requirements of the complainants, and the facilities of the complainants for handling and disposing of their production. All of said orders have been arbitrarily fixed for the purpose of holding the state output to approximately the aforesaid figure without regard to a proper enforcement of the Conservation Act or public necessity.

V

On April 22, 1933, in furtherance of the aforesaid plan, the Railroad Commission of Texas made, issued, promulgated and put into effect an order providing that no well in the East Texas field, including the wells of these complainants, should be allowed to produce in one day in excess of fifteen per cent of its average hourly potential producing capacity, as determined by said Commission.

On June 13, 1933, the order was amended reducing the allowable production per well to ten per cent. On September 30, 1933, [fol. 10] the order was amended further reducing the allowable twenty-six per cent, and on October 18, 1933, the order was again amended further reducing the allowable four per cent, so that at the present time the complainants are prohibited from producing from any well on any day in excess of approximately seven per cent of the amount the well is capable of producing in one hour, or 7% of 1/24 of the wells capacity to produce, or about .002 11/12% of their total producing capacity, which, from a practical standpoint, is virtual confiscation of complainants' properties.

VI

The East Texas oil field is very large, comprising approximately 125,000 acres. It has a potential producing capacity of 100,000,000 barrels per day. It is capable of furnishing the United States supply of oil for several years. It is also capable of flowing this supply without the aid of artificial lifting power, and can, therefore, supply the requirements of the industry much cheaper than stripper fields and oil fields which have ceased to flow and from which the oil can be produced by the use of artificial lifting means. One of the purposes, and the operation and effect of the aforesaid plan, is to arbitrarily curtail the production in East Texas so as to enable those engaged in the industry elsewhere to compete with complainants and others similarly situated in East Texas, thus penalizing complainants and other East Texas producers for the benefit of producers less favorably situated. This results in denying these complainants the equal protection of the law.

[fol. 11]

VII

Prior to the enactment and approval by the President of the National Recovery Act, the Railroad Commission attempted to justify its proration orders as conservation measures to prevent waste, but since that time, and at present, said orders are not and do not purport to be conservation measures, and have and bear no relation to the prevention of waste, but their purpose, as stated in the orders, is to carry into effect the program of the Federal officers, hereinafter defined and set forth.

VIII

Purporting to be acting under authority conferred by the National Recovery Act, on August 19, 1933, the Honorable Franklin D. Roosevelt, assuming to act in his official capacity as President of the United States, but as a matter of fact, without any authority whatever, approved and promulgated what is known as the "Code of Fair Competition for the Petroleum Industry." By executive order of July 14, 1933, he attempted to delegate to the Honorable Harold L. Ickes, Secretary of the Interior of the United States, Plenary power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry, being specifically referred to as section 9 of the Act.

IX

The defendants herein referred to as Federal officers, under color of authority conferred by the National Recovery Act, and the orders of the Honorable Franklin D. [fol. 12] Roosevelt and the Honorable Harold L. Ickes, with the assistance and joint action of the defendants referred to as State officers, are attempting to enforce the aforesaid code and orders as against these complainants, and as an incident to such enforcement are demanding of and compelling complainants to furnish them with monthly reports showing the following information:

(a) Name, residence, and post office address;

(b) Location of producing properties and number of wells;

(c) Allowable production for each well as prescribed by the Railroad Commission;

(d) Daily production in barrels from each property;

(e) Daily production in barrels from each well;

(f) Amount of all deliveries of petroleum, showing names and places of business of all persons to whom deliveries are made, the quantity involved in each delivery, transportation or other disposition thereof;

(g) All petroleum in storage;

(h) Declaration that no part of such petroleum products has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed by any board, commission, officer or duly authorized agency of the state.

[fol. 13] X

The Federal officers are further demanding that complainant produce no more oil from their wells than the amount prescribed by the orders of the Texas Railroad Commission, and as incident to enforcement of such demands they make repeated inspection of complainants' properties, and gauge their tanks to ascertain the amount of oil being produced by the complainants, and said Federal officers have informed the complainants that they were policing the East Texas oil field for the purpose of compelling the complainants and other producers to comply with the orders of the Railroad Commission of Texas, and said orders of the Honorable Franklin D. Roosevelt and the Honorable Harold L. Ickes, as herein set out.

The said code further provides:

(a) That complainants and other producers engaged in the producing of oil shall pay their employees not less than a specified wage;

(b) shall not work their employees in excess of a specified number of hours per day;

(c) that all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) that complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, [fol. 14] and that the schedule of hours of all such employees conform to those prescribed by said code;

(e) that complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) that complainants and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a Planning and Coordinating Committee appointed by the President;

(g) that not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) that required production of oil to balance consumer demand for petroleum products shall be estimated by a Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The defendants herein referred to as Federal officers are attempting to compel these complainants to comply with all the aforesaid provisions of said code and also the aforesaid orders made by the Honorable Franklin D. Roosevelt and the Honorable Harold L. Ickes.

[fol. 15]

XI

Further complaining, these complainants allege that on July 11, 1933, the Honorable Franklin D. Roosevelt, President of the United States, made and promulgated an order, whereby he decreed and ordered that no petroleum, or the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn by any state law or valid regulation or order prescribed thereunder by any board, commission, officer; or other duly authorized agency of a state should be transported in interstate or foreign commerce. Under the assumption that the present orders of the Texas Railroad Commission are valid, the Federal officers are attempting under the guise of carrying into effect the order of the President, to prevent these complainants from producing any oil except the allowable fixed by said Railroad Commission, claiming that they are regulating interstate commerce, whereas, as a matter of fact, these complainants are not engaged in shipping any oil, either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases, and title to said oil passes from complainants upon its being delivered to buyers on the premises where it is produced. Moreover, complainants allege that they are not producing or shipping any oil in violation of any valid order of any state board, commission, officer or other duly authorized agency of the state, because the orders of the Railroad Commission of Texas, which said defendants are acting under, are void for the various reasons herein set out.

[fol. 16]

XII

These complainants further allege that the Secretary of the Interior has further ordered that there shall not be produced within the State of Texas daily in excess of 965,000 barrels of oil per day; that this amount shall be allocated among the different oil fields in the state, and among the different producers in the state, by the Railroad Commission of Texas; that the order of said Commission fixing the allowable for the wells of the complainants was made to carry into effect the aforesaid order of the Secretary of the Interior, and the operation and effect of said order is not the prevention of waste or the conservation of oil, but solely to curtail the production of oil within the state to that figure. Notwithstanding the aforesaid facts, the defendants both Federal and State officers have announced their intention of enforcing the aforesaid orders, and unless restrained from so doing by this Court they will compel these complainants to comply with said orders.

XIII

These complainants further allege that the Secretary of the Interior has made, issued and promulgated an order effective December 1, 1933, which prohibits complainants from selling any oil at a price below $1.17 per barrel, and unless enjoined from so doing the Federal officers will force complainant's obedience to said order.

XIV

These complainants further allege that the defendants State officers have informed the complainants that unless [fol. 17] they comply with the aforesaid orders of the Railroad Commission of Texas that said officers will institute and prosecute against complainants suits to recover penalties of $1,000.00 per day for each day that said orders are violated, and will file informations and cause complainants to be arrested and prosecuted and attempt to have fines and prison sentences inflicted on complainants, as provided in the Conservation Act, and also Act No. — of the 43rd Legislature of the State of Texas, 1933, page 422, Chapter 165, (Title 14, Article 1112 B, Vernon's Annotated Revised Civil and Criminal Statutes of the State of Texas, October, 1933, Cumulative Pamphlet). And said Federal officers have stated that, if the complainants do not comply with said orders they will cause them to be arrested and prosecuted under paragraph c, Section 9, of the National Recovery Act, which prescribes a fine of $1,000.00, or imprisonment for not to exceed six months, or both, for each violation, and unless enjoined, both the State and Federal officers will institute and prosecute such actions, both civilly and criminally, against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

XV

Complainants further allege that while the State officers claim to be attempting to enforce the Conservation Act, and the Federal officers claim to be engaged in regulating interstate commerce, as a matter of fact, they are jointly engaged in a conspiracy to curtail production of crude oil in Texas, and throughout the United States, as ordered [fol. 18] by the Secretary of the Interior; that all their acts and orders are in furtherance of said conspiracy, and are illegal, unwarranted, arbitrary, unjustified, null and void, and constitute an illegal, unwarranted and unnecessary interference with the rights, liberty and property of complainants, and result in depriving them of their property without due process of law, causing them irreparable loss and damage, for which they have no adequate remedy at law.

XVI

Complainants allege that the orders of the Railroad Commission of Texas, and the orders of the Honorable Franklin D. Roosevelt, President of the United States, and the Honorable Harold L. Ickes, Secretary of the Interior, are illegal, null and void, and the acts of the defendants in enforcing or attempting to enforce said orders illegal, unwarranted and a mere usurpation of power and authority for the following reasons:

1

The National Recovery Act is null and void, and particularly Section 9 thereof, because—

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

[fol. 19] (c) It authorizes the President to exercise police powers not granted to the National Government by the several statutes of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainant of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Federal Government the right to compel the complainants and others to produce their papers and effects, compel them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 8th Amendment to National Constitution in that it imposes excessive fines and cruel and unusual punishment.

2

Neither orders of the President nor the orders of the Secretary of the Interior, nor the acts of the defendants, are authorized by the National Recovery Act.

3

Section 9, of the National Recovery Act, is void because it is an attempt by Congress to delegate to the President the power to regulate and curtail the production of crude oil under the guise of regulating interstate commerce, [fol. 20] whereas Congress cannot delegate its power to regulate interstate commerce, and Congress itself has no power to curtail production of oil.

4

(a) The orders of the Railroad Commission are not authorized by the Conservation Act or any other law.

(b) They were made without notice and without a hearing.

(c) They are arbitrary, confiscatory and discriminatory for the reasons hereinabove set forth.

(d) The enforcement of said orders deprives these complainants of their property without due process of law, deprives them of their liberty of contract, and the equal protection of the law, in violation of the 14th Amendment to the National Constitution.

5

(a) The Conservation Act is void because its operation and effect deprives complainants and others affected thereby of their propery without due process of law, and denies them the equal protection of the law, contrary to the 14th Amendment to the National Constitution.

(b) Its operation and effect burdens interstate commerce in violation of the Commerce Clause of the National Constitution.

(c) It is so vague, indefinite and uncertain that its meaning is not ascertainable.

(d) It is an attempt by the General Assembly of Texas [fol. 21] to delegate the power to curtail and regulate the production of oil when the General Assembly itself has no such power, and if it did have, it could not delegate it.

XVII

Complainants specifically plead that the penalty provisions of the National Recovery Act are null and void for the following reasons:

The penalties prescribed are so excessive and disproportionate to the offense for which they are assessed that they are in violation of the 7th Amendment to the Constitution of the United States prohibiting excessive fines and cruel and unusual punishment; and, for the further reason that they are so extreme and drastic as to be calculated to affright those affected thereby from resorting to the Courts to test the validity of the act, to ascertain their rights thereunder and knowing them dare maintain them, and for the further reason that the terms and provisions of said Act are so vague, indefinite and uncertain that it is impossible for those affected thereby to form any standard of conduct whereby they can safely know when they are or are not violating the terms of said Act.

XVIII

For all of the reasons above set forth, and for the further reason that their enforcement is in violation of the 14th Amendment to the Constitution of the United States, the penalty provisions of the Conservation Act of the State of Texas, as well as Act No. — of the 43rd Legislature of the State of Texas, 1933, page 422, Chapter 165, (Title 14, Article 1112 B, Vernon's Annotated Revised Civil and [fol. 22] Criminal Statutes of the State of Texas, October, 1933, Cumulative Pamphlet) are null and void.

Wherefore, complainants pray:

1: That a three-judge court be convened as provided in Section 380 of the U. S. C. A.;

2: That the Acts and orders of the defendants, and each of them hereinabove complained of, be held to be null and void;

3: That an interlocutory injunction be granted, enjoining the defendants, and each of them, their assistants, agents, representatives, servants and employees, from enforcing or attempting to enforce any of the aforesaid orders, and from doing any of the unlawful acts and things herein complained of, and from in any manner interfering with the complainants in producing, handling and disposing of the oil from their properties herein described, and from in any manner interfering with the complainants in the lawful operation of said properties; and that they be further enjoined from enforcing or attempting to enforce, either through civil action or criminal prosecution, any of the fines and penalties prescribed by either of the acts herein complained of;

4: That upon a final hearing said injunction be made permanent;

5: For costs, and such other, further and general relief as complainants may be entitled to.

W. T. Saye, Saye, Smead & Saye, Solicitors for Complainants.

[fol. 23] *Duly sworn to by W. T. Saye. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER OF THE DEFENDANTS, ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER—Filed Dec. 12, 1933

Come now the defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer separately and severally, and for answer separately and severally to the Bill of Complaint in this cause say:

[fol. 24] (1) There is a misjoinder of parties complaintant in that it affirmatively appears from the averments of the bill that the complainants have no joint cause of action against these defendants and the facts averred in the Bill do not constitute a joint cause of action against these defendants.

(2) There is a misjoinder of causes of action in the Bill in that the facts averred therein do not constitute a joint cause of action in the complaints against these defendants and two or more separate, several and distinct causes of action are improperly joined in the bill.

(3) There is no equity in the bill against these defendants for the reason that it affirmatively appears from the averments thereof that in the performance of the acts therein complained of these defendants have been and are engaged in the execution and performance of orders and functions of the President of the United States or the Secretary of the Interior acting directly in the place of the President, and one so acting is not subject to restraint or injunction.

(4) This court is without jurisdiction to enjoin these defendants in this case for the reason that, in respect of all the matters and things herein complained of, they have been and are engaged in the performance of functions delegated to them by the President of the United States or by the Secretary of the Interior acting directly in the place of the President and one so acting under powers conferred by the Congress upon the President may not be restrained or enjoined.

(5) There is a nonjoinder of parties defendant for that [fol. 25] the Secretary of the Interior is an indispensable party. The Defendant Ryan is now, and was at all times referred to in the bill, a Special Agent of the Secretary of the Interior assigned to the Division of Investigations of the Department of the Interior and all acts that he has committed in connection with the matters and things referred to in the bill were committed by him solely and exclusively in his capacity as such Special Agent of the Secretary of the Interior and not otherwise, and this bill therefore is

not maintainable against the defendant Ryan in the absence of the Secretary of the Interior as a party for the reason that the defendant Ryan was acting as a subordinate of the Secretary of the Interior in respect of the matters and things herein complained of.

(6) Further answering the bill these defendants say that it affirmatively appears from the averments thereof that these defendants, with respect to all the matters and things therein complained of, were carrying out and performing orders of the President of the United States and the Secretary of the Interior, and these defendants say therefore that the bill is not maintainable against them in the absence of the said superior officials as whose subordinates it is alleged in the bill they were acting as aforesaid.

(7) There is no equity in the bill against these defendants for the reason that the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the executive orders of the President of the United States issued thereunder and the said regulations are in all respects valid and constitutional.

[fol. 26] (8) Further answering the bill, these defendants say that on, to-wit, July 11, 1933, the President of the United States, by virtue of authority vested in him by the National Industrial Recovery Act, issued and promulgated an executive order prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, a true copy of the said executive order, marked Exhibit 1, being attached hereto and made a part hereof; that on, to-wit, July 14, 1933, the President of the United States, by virtue of authority vested in him by the National Industrial Recovery Act, in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) of the said Act and for the purpose of securing the enforcement of the said executive order of July 11, 1933, authorized the Secretary of the Interior to exercise all the powers vested in the President for the purpose of enforcing Section 9 (c) of the said Act and the said executive order of July 11, 1933, including full authority to designate and appoint such agents, and set up such boards and agencies as he might deem necessary, a true copy of the said executive order, marked Exhibit 2, being attached hereto and made a part hereof; that on July 15, 1933, July 25, 1933, August 2, 1933 and August 21, 1933, the Secretary of the Interior, by virtue of the power and authority vested in him by the National Industrial Recovery Act and the said executive orders of the President, approved and promulgated certain regulations, a true copy thereof, marked Exhibit 3, being attached hereto and made a part hereof; that with respect to all the matters and things complained of in the bill, the defendant Ryan has [fol. 27] been and is acting as a Special Agent of the Secretary of the Interior in carrying out and performing the said executive orders of the President and the said regulations, and these defendants aver that this bill for an injunction will not lie against them for the reason that neither the President of the United States nor his agent in performing functions delegated to him by the President is subject to restraint or injunction.

(9) Answering the first unnumbered paragraph of the bill, these defendants say that they are without knowledge with respect to whether the complainant, Amazon Petroleum Corporation, is a corporation existing under the laws of Delaware, or whether it is qualified to do business in Texas or whether its office and principal place of business are located in Henderson, Rusk County, Texas, and demand strict proof thereof insofar as such averments are material; that they are without knowledge as to whether the complainants Barney Cockburn and E. J. Boase are citizens and residents of the State of Oklahoma temporarily residing in Rusk County, Texas, and demand strict proof thereof insofar as such averments are material; that they are without knowledge as to whether the complainant Charles M. Cope is a resident of Kilgore, Gregg County, Texas and demand strict proof thereof, insofar as such averment is material; that they are without knowledge as to whether the complainant W. C. Turnbow Petroleum Corporation is a corporation existing under the laws of the State of Colorado or whether it duly qualified to do business in Texas, or whether its office and principal place of business are in Longview, Gregg County, Texas, and

demand strict proof thereof, insofar as such averments are material.

Further answering the said unnumbered paragraph of the bill, these defendants admit that the Railroad Com-[fol. 28] mission of Texas is an agency of the State of Texas duly and regularly created and existing under the laws of Texas with its principal office in Austin, Texas; that the defendants Lon A. Smith, C. V. Terrell, and E. O. Thompson are the duly elected, qualified, and acting members of the Railroad Commission in Texas; that the said Lon A. Smith resides in Henderson, Rusk County, Texas; that the defendant C. V. Terrell resides in Austin, Travis County, Texas; that the defendant E. O. Thompson resides in Amarillo, Potter County, Texas; that the defendant James V. Allred is the duly qualified and acting Attorney General of Texas; that the defendant H. H. Welborn is the duly qualified and acting District Attorney of Rusk County, Texas, and resides in Henderson, Texas; that the defendant Milton Molhusen is the duly qualified and acting District Attorney of Gregg County, Texas, and resides in Longview, Texas; that the defendant Nat Gentry is the duly elected, qualified and acting County Attorney of Smith County, Texas, and resides in Tyler, Texas. These defendants deny that the defendant Ryan is Special Agent in Charge of the Division of Investigations of the United States Department of the Interior, but admit that he is a Special Agent of the Division of Investigations of the United States Department of the Interior, that as such Special Agent he is in charge of the office of the said Division of Investigations in Tyler, Texas, that he is a nonresident of Texas, and that he is temporarily residing in Tyler, Texas; the defendants admit that the defendant J. Howard Marshall is a Special Assistant to the Attorney General of the United States and that he is a nonresident of the State of Texas, but deny that he is temporarily residing in Tyler, Texas. These defendants admit that S. D. Bennett is United States Attorney for the Eastern District of Texas and resides in Beaumont, Texas, and that Phil E. Baer is United States Marshal for the Eastern [fol. 29] District of Texas and resides in Paris, Texas.

(10) These defendants are without knowledge as to any of the facts averred in paragraph I of the bill and demand strict proof thereof insofar as such averments are material.

(11) Answering paragraph II of the bill, these defendants say that they are without knowledge as to the ownership by the complainants of the leases and properties therein referred to and demand strict proof thereof insofar as such averment is material. These defendants deny that the complainants are entitled to the exclusive control and possession of the said properties and that they have an absolute right to produce therefrom all the oil and gas which the said properties are capable of producing. These defendants aver that on the contrary, the rights of the complainants to produce oil and gas from the said properties are subject to valid existing orders and regulations of the State of Texas and the United States and their duly authorized governmental agencies and officials. These defendants deny that wells located on the said properties are capable of producing without waste or injury of any kind at least one-half of their capacity, or that there is a market demand for quantities of oil far in excess of the amounts which the complainants are allowed to produce under any acts and orders of these defendants, or that if it were not for the said acts and orders the complainants could produce, handle, and dispose of large quantities of oil which they are being deprived of producing by reason of the said acts and orders.

Further answering paragraph II of the bill, these defendants aver that the Railroad Commission of Texas, in issuing orders fixing the allowable production of oil from said properties has been duly and legally authorized by [fol. 30] statutes of the State of Texas to consider both underground and surface waste and has been so authorized to eliminate and prevent waste caused by contribution from the manner in which all the producing properties in the State of Texas and other States in the United States are operated and produced as well as to eliminate and prevent waste that may result from the manner in which a particular well or property is operated and produced, and that said Railroad Commission of Texas in entering the orders herein complained of has properly considered and acted to eliminate waste as thus defined by the statutes of Texas.

Further answering paragraph II of the bill, the defendants say that if, as the complainants aver in paragraph VI of the bill, the potential producing capacity of the East

Texas Oil Field is 100,000,000 barrels of oil per day and if the owners of all oil producing properties therein produced therefrom at least one-half of their capacity as the complainants claim to have a right to do, the amount of oil thus produced from the said East Texas Field alone would aggregate approximately twenty-three times the total amount necessary from all sources to satisfy the requirements of all consumers of petroleum and its products in the United States, and great and unnecessary waste would therefore result.

(12) Answering paragraph III of the bill, these defendants admit that the defendants referred to as State officers in the bill insofar as they are acting at all in respect of the matters and things therein complained of, are acting under and by authority of statutes of Texas and valid orders of the Railroad Commission of Texas issued thereunder, but these defendants deny that the defendants designated State officers are acting or purporting to act under and by virtue of the authority of the National Industrial [fol. 31] Recovery Act. These defendants admit that, insofar as they have acted and are acting in respect to the matters and things complained of in the bill, they are acting under authority of the National Industrial Recovery Act and valid orders and regulations issued thereunder and the Code of Fair Competition for the petroleum industry, but they deny that they are trespassers in any respect whatsoever.

(13) Answering paragraph IV of the bill, these defendants say that they are without knowledge as to the motives or purposes by which the Railroad Commission of Texas has been actuated in issuing the orders therein referred to or as to the objectives of the said orders, and these defendants demand strict proof thereof, insofar as such averments are material, but these defendants aver that it does not appear from the averments of the said paragraph IV that any order therein referred to is now in force and effect, that for aught that appears to the contrary from the averments of the said paragraph, none of the said orders complained of or the alleged agreement is now in force and effect, and that all the allegations of the said paragraph IV are wholly irrelevant and immaterial and are not pertinent to any material issue involved in this

cause. These defendants deny that any order of the Railroad Commission of Texas now in force and effect by which the allowable daily production of oil in Texas is determined was issued pursuant to any agreement between the said Railroad Commission and conservation boards in other oil producing States and that any such order was issued for the purpose of creating an artificial demand for oil and of reducing the supply of oil below the actual consumptive demand so as to maintain a high price for oil. The defendants deny that the allowable production fixed by any such order was arbitrarily determined with a view to limiting the production of oil in Texas to approximately 900,000 barrels per day, and deny that the [fol. 32] said allowable production was fixed without regard and consideration for the producing capacity of wells and for the market outlet; but they aver that all such orders that are material herein were legally and validly issued to the end that waste as defined in the pertinent statutes of Texas might be prevented and with due consideration for the public necessity of conserving oil as a natural resource. These defendants deny that the requirements of the complainants and their facilities for handling and disposing of oil produced by them are in any respect material. These defendants aver that the total allowable production of oil for the State of Texas and the amount of production allocated to various wells of the complainants were determined by the said Railroad Commission upon the basis of the current reasonable market demand for oil in the State of Texas and the potential producing capacities of the various wells of the complainants in accordance with and with due regard for the methods prescribed by the statutes of the State of Texas.

(14) Answering paragraph V of the bill, these defendants admit that on or about April 22, 1933, the Railroad Commission of Texas issued and promulgated an order prohibiting production of oil by any well in the East Texas Oil field in any one day in excess of 15% of its hourly potential capacity as determined by the said Railroad Commission, but these defendants deny that the said order was issued and promulgated in furtherance of the alleged plan referred to in the said paragraph V or in furtherance of any plan not authorized and required by law and they aver that it was in all respects legal and valid. These

defendants admit that on June 13, 1933, the said order of April 22, 1933, was so amended by the said Railroad Commission as to reduce the allowable production per well per day to not in excess of 10% of its hourly potential produc- [fol. 33] ing capacity as determined by the said Railroad Commission; that on or about September 30, 1933, the said order of April 22, 1933, was further amended by the said Railroad Commission so as to reduce the allowable production per well per day provided by the said order of June 13, 1933, by 26% of its hourly potential producing capacity as determined by the said Railroad Commission; and that on or about October 18, 1933, the said order of September 30, 1933, was amended by the said Railroad Commission so as to reduce the allowable productions per well per day as provided in said order of September 30, 1933, by 4% of its hourly potential producing capacity as determined by the said Railroad Commission.

The defendants deny that the allowable production of wells of the complainant has been in fact reduced to .002 11/12 per cent of their true and actual potential producing capacity and that the allowable production thereof is so small as to be virtually confiscatory or is smaller than is required by public necessity.

(15) Answering paragraph VI of the bill, these defendants admit that the oil field known as the East Texas Oil Field comprises approximately 125,000 acres of land, but they have no knowledge as to the actual potential producing capacity of the said East Texas Oil Field and demand strict proof thereof insofar as such averment is material. These defendants admit, insofar as it is material, that the East Texas Oil Field is capable of furnishing the total supply of oil for the United States for several years and that some of the wells located therein flow without the aid of artificial lifting power and can supply oil at less cost than stripper fields and fields that have passed their period of flush production. The defendants deny the existence of the plan referred to in said paragraph VI; they deny that [fol. 34] the purpose of effect of any statute, order or regulation under which these defendants have been and are acting is arbitrarily to curtail the production of oil in the said East Texas Oil Field so as to enable persons engaged in the production of oil elsewhere to compete with the com-

plainants and others producing oil in the East Texas Oil Field; they deny that any such statute, order, or regulation penalizes the complainants for the benefit of producers less favorably situated, and they deny that any such statute, order, or regulation, or any act of these defendants has resulted in the denial to the complainants of the equal protection of the law.

Further answering paragraph VI of the bill, these defendants say that if the wells in the East Texas Oil Field were permitted to flow to the extent necessary to supply the total requirements of consumers of oil in the United States not only would irreparable loss and waste result therefrom through the shutting in and closing down of stripper wells contrary to the public policy of the State of Texas, as expressed in its statutes, the purpose of which is to conserve stripper wells, but also the rapid rate of flow necessary to satisfy consumer requirements of the United States from the East Texas Oil Field would result in the wasteful dissipation of the reservoir energy of the said Field and would greatly reduce the total ultimate recovery of oil therefrom.

(16) Answering paragraph VII of the bill, these defendants deny that the orders of the Railroad Commission of Texas therein complained of are not and do not purport to be conservation measures and bear no relation to the prevention of waste, and they deny that the purpose of the said Railroad Commission in issuing the said orders was to carry into effect any program other than that authorized by law.

The defendants aver that the Railroad Commission of [fol. 35] Texas has been properly authorized by statutes of the State of Texas to make and enforce such rules, orders and regulations as may be necessary to prevent waste of crude petroleum oil in drilling and producing operations and in the storing, piping and distribution thereof; that the statutes of Texas have made unlawful the production, storage, or transportation of crude petroleum oil in such manner and in such amount and under such conditions as to constitute waste which is therein defined to include underground waste, however caused, physical waste incident to and resulting from so drilling and operating wells as to reduce the total ultimate recovery of oil from any pool, waste incident to or resulting from inefficient, excessive, or improper use of the reservoir energy, including gas energy or water-drive in any well or pool, surface waste, and the production of oil in excess of transportation and marketing facilities or reasonable market demand. These defendants further aver that the said Railroad Commission is authorized and required by the statutes of Texas to hold hearings to inquire into the production, storage, or transportation and the market demand for oil in order to determine whether waste exists or is imminent; that pursuant to such statutory authorization and requirement, a hearing was held and the order herein complained of was issued by the said Railroad Commission and that the said order is a proper and valid exercise of the powers granted to the said Railroad Commission to prevent the waste of crude oil, and that the said order is sustained by sufficient evidence introduced at the said hearing, and that it in fact purports to be and in truth is an order intended to prevent waste and that it will in fact do so.

The defendants aver that the order of the Railroad Commission of Texas restricting the allowable production of oil to the reasonable market demand in Texas is a true con- [fol. 36] servation measure and will prevent waste of oil and its products in that it will prevent unnecessary and wasteful storage of oil produced in excess of the market demand, and will prevent the premature abandonment of stripper wells and will insure a market outlet for all wells in the State, thereby insuring the ratable taking of oil from all wells in any common source of supply, which can not be accomplished by any other standard of restriction, with the result that the wasteful consequences of unratable taking in any common source of supply will be prevented, to-wit: channeling and coning and water infiltration in the producing strata in areas of excessive production, the wasteful depletion of the reservoir energy and a reduction in the total amount of oil recoverable therefrom.

(17). Answering paragraph VIII of the bill, these defendants, admit that on July 14, 1933, the President of the United States issued an executive order authorizing the Secretary of the Interior to exercise the powers vested in the President for the purpose of enforcing Section 9 (c) of the National Industrial Recovery Act and the executive order of the President issued thereunder on July 11, 1933, including full authority to designate and appoint such agents and to set up such boards and agencies as the Secretary of the Interior might see fit, and to promulgate such rules and regulations as he might deem necessary, and admit that on August 19, 1933, the President of the United States approved a Code of Fair Competition for the Petroleum Industry, but these defendants deny that the President was without authority in any respect and aver that each said executive order was and is in all respects legal and valid.

Further answering paragraph VIII these defendants allege the Congress of the United States, in a great national emergency declared by the Congress, enacted the National Industrial Act (Public No. 67, 73rd Congress); and pursuant to its provisions, the President of the United [fol. 37] States, on August 19, 1933, approved a Code of Fair Competition for the Petroleum Industry, which is now in full force and effect with certain amendments lawfully adopted on September 13, 1933. Each of these defendants in all of their dealings with the plaintiffs herein have acted pursuant to the provisions of said law, said Code and the Rules and regulations validly issued by the Secretary of the Interior under the provisions of the aforesaid law and by lawful authority delegated to him by the President of the United States. The United States of America has an interest in the proper and reasonable conservation of petroleum and its products; such is an irreplaceable natural resource, necessary and essential for the common defense of the nation in time of war. More than 80% of the whole volume of petroleum and its products move in the channel of interstate and foreign commerce, and so intermixed, intermingled and interwoven have become the interstate and intrastate operations of the industry as that the former cannot be properly regulated without those necessary regulations prescribed by Amended Code of Fair Competition and the rules promulgated by the Secretary of the Interior by authority of the President, pursuant to provisions of Section 9 (c) and 10 (a) of Title One of the National Industrial Recovery Act, each of which are valid and lawful regulations; and all of said regulations and Code provisions, as well as the Act of Congress authorizing same, are a valid exercise of the Federal powers, and such tend to accomplish and are accomplishing the purposes set forth in Section One, Title One of the aforesaid law.

(18) Answering paragraph IX of the bill, these defendants deny that they are acting under color of authority and aver that, insofar as they are acting at all in respect of the matters and things complained of in the bill, they are acting and have acted under and pursuant to valid orders [fol. 38] of the President of the United States, the Secretary of the Interior, the Acts of Congress and the aforesaid Petroleum Code. The defendants aver that the defendant Ryan has demanded of the complainants that they furnish to the Division of Investigations of the Department of the Interior reports setting forth substantially the information referred to in paragraph IX of the bill, but these defendants aver that in so demanding of the complainants the defendant Ryan was acting as a subordinate of the Secretary of the Interior for the purpose of carrying out and enforcing the regulations prescribed by the Secretary of the Interior in conformity with the National Industrial Recovery Act and the said executive orders of the President of the United States issued pursuant thereto, all of which the defendants aver are legal and valid.

(19) Answering paragraph X of the bill, the defendants say that under the provisions of the National Industrial Recovery Act the President of the United States on August 19, 1933, approved a Code of Fair Competition for the Petroleum Industry and thereafter on September 13, 1933, the President, in accordance with the said Act, approved certain modifications of the said Code; that a true copy of the said Code as modified as aforesaid, marked Exhibit 4, is attached hereto and made a part hereof; that on August 28, 1933, the President by virtue of the authority vested in him by Section 2 (b) of the National Industrial Recovery Act, and Section 2 of Article I and Section 1 (b) of Article VII of the said Code designated and appointed, for the petroleum industry, the Secretary of the Interior to be the Administrator and the Department of the Interior to be the Federal Agency to exercise all the functions and powers vested in the President or in any Federal Agency by the said Act and Code, a true copy of the said executive order, marked Exhibit 5, being attached hereto and made

[fol. 39] a part hereof; that thereafter the Department of the Interior has at intervals estimated the required production of crude oil to balance consumer demand for petroleum products and determined the consumer demand and thereafter the same was equitably allocated among the several states, as provided by Article III of the said Code; and recommended a figure which fairly represented the net reasonable market demand for petroleum products in Texas and each producing State; that under the Constitution and statutes of the State of Texas the said Railroad Commission has duly and legally, after hearing, and in compliance with the statutes of Texas, and in order to prevent waste, fixed and determined the market demand for oil produced in the State of Texas after due consideration of all evidence, including the recommendation of the Secretary of the Interior as to the market demand of petroleum produced in Texas; that prior to the approval of the said Code as modified and prior to any estimate of market or consumer demand, certification thereof and recommendation to the Railroad Commision of Texas by the Department of the Interior as aforesaid, the said Railroad Commission of Texas, in Compliance with the laws of Texas, on April 22, 1933, and on June 13, 1933, made and issued valid orders of allowable production of oil by wells in the said East Texas Oil Field and since the said dates vast quantities of petroleum and products thereof have been and are now stored in the said East Texas Oil Field, which petroleum was produced in violation of the said orders of the Railroad Commission of Texas.

Further answering paragraph X of the bill, these defendants admit that in accordance with the directions of the Secretary of the Interior, the defendant Ryan has demanded and is demanding that the complainants furnish to the Division of Investigations of the Department of the In-[fol. 40]terior certain information necessary in the proper and orderly enforcement of the National Industrial Recovery Act and of the said executive order of the President thereunder. The defendants aver that the information demanded of the complainants is necessarily within their knowledge and is such only as is reasonably calculated to aid in preventing transportation in interstate commerce of crude oil and the products thereof produced in violation of the laws of the State of Texas and valid orders of the

Railroad Commission of Texas applicable thereof, and that the information thus demanded is necessary to the proper and orderly enforcement of Section 9 (c) of the National Industrial Recovery Act and the said executive order of the President thereunder, and the information and reports demanded of the complainants by the defendant Ryan have been and are being demanded by him as a Special agent of the Secretary of the Interior under or pursuant to the said executive order and the said regulations promulgated by the Secretary of the Interior. The defendants Bennett and Baer have not demanded or are not demanding information or reports from the complainants.

Further answering paragraph X of the bill, defendants aver that, with respect to the Code provisions therein set forth, the plaintiffs have not shown any injury to their business of such a nature as to entitle them to injunctive relief; but in this connection the defendants allege that each of said provisions of the Code enumerated in said paragraph are valid provisions for each and all of the reasons set forth in paragraph Seventeen (17) hereof; that for the period of the emergency declared by Congress, such regulations are a valid exercise of the Federal powers heretofore mentioned and they serve to accomplish and are effecting, the declared purposes of the National Industrial [fol. 41] Recovery Act which is a valid law of Congress under the provisions of which each and all of said regulations were issued.

(20) Answering paragraph XI of the bill, these defendants say that on July 11, 1933, the president of the United States, by virtue of the authority vested in him by the National Industrial Recovery Act, issued and promulgated an executive order prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of a State. These defendants admit that they are attempting to enforce the said executive order of the President. The defendants say that they are without knowledge as to whether the complainants are engaged in shipping oil and as to whether they are engaged solely in

the business of producing and marketing oil, and demand strict proof thereof insofar as such averments are material. The defendants aver that they are without knowledge as to where oil sold by the complainants is sold by them and are without knowledge as to when the title to such oil passes from complainants, and demand strict proof thereof insofar as such averments are material. The defendants deny that the orders of the Railroad Commisssion of Texas referred to are void.

Further answering paragraph XI of the bill, the defendants aver that the regulations pursuant to which information is sought from the complainants are reasonable, proper and necessary in the enforcement of the said executive order of the President issued under and pursuant to Section 9 (c) of the National Industrial Recovery Act and that such information is sought from the complainants as [fol. 42] an essential and necessary incident to the enforcement of such executive order and the accomplishment of the purposes of the Congress in the enactment of the said Section 9 (c) and the defendants aver that the said executive order cannot be effectively enforced without the said information sought from the complainants and others similarly situated and that sources of petroleum and the products thereof illegally produced and cannot be otherwise discovered.

Further answering paragraph XI of the bill, the defendants aver that oil and gas are natural resources of a unique character; that when consumed or wasted they can never be replaced; that the maintainance of an adequate supply of crude oil and the refined products thereof is essential to the national well-being during times of peace and is a vital necessity for national defense during times of war; that the conservation of these natural resources is a matter of grave national as well as local concern; that there are only a few sources of supply of crude oil in the United States where the production is in excess of local consumer requirements; that the excess of supply over local or State consumer requirements from these sources moves, and must of necessity move, in interstate and foreign commerce; that all oil produced whether it actually moves in interstate commerce or not is commingled with oil that is moving in interstate commerce and enters into the flow or current of interstate commerce in such manner as directly to affect the same and renders it necessary to control and regulate all production in order to preserve the orderly and proper movement of oil in interstate commerce; that the orderly movement of such production from these sources of excessive supply into interstate commerce is necessary for the proper preservation and protection of commerce between the States; that excessive production [fol. 43] from any one source of supply must be dumped upon the interstate market and leads to the demoralization of the orderly movement and of normal flow of oil and its products in interstate commerce, disrupting the industry in other localities and adversely burdening and effecting interstate commerce, and causes the wasteful shutting of thousands of wells throughout the nation and closing down of refineries, and is attended by wide-spread unemployment and destruction of property, values and aggravates the existing economic depression.

The defendants further aver that the production of oil is of such a unique character that it is not amenable to the ordinary law of supply and demand; that if one producer from a common source of supply has a market outlet for his production all the other producers from the same common source of supply must of necessity produce the oil from under their properties in order to protect them from drainage regardless of whether these producers have a market outlet for their production; that this fact causes the production and building up in certain localities of excessive stocks of petroleum and its products far in excess of consumer requirements and leads to waste of oil by evaporation in storage, and the waste that necessarily attends dumping of this excessive supply on the market. And the defendants aver that there are at this time enormous quantities of oil in storage in the East Texas Oil Field and elsewhere in the United States and that the potential capacity of the various sources of supply in this country is many times the amount required to satisfy the current needs of consumers and that unless withdrawals from storage are regulated and unless production is restricted so as not to exceed current consumption tremendous waste will result and the oil industry will be thrown into a chaotic condition [fol. 44] and interstate commerce in oil and its products will be demoralized.

The defendants further aver that the conservation of this natural resource requires that it be produced only to the extent that production is necessary to satisfy current consumer requirements; that any production in excess of this amount inevitably leads to waste and the demoralization of interstate commerce; that such restriction of production cannot be accomplished by the individual action of the various producing States but can be accomplished only by the action of the National Government in restricting the production from all sources of supply within the nation; and that only through such restriction by the National Government as provided in Section 9 (c) of the Recovery Act and Amended Article III of the Petroleum Code can the channels of commerce among the States and with foreign countries be kept and maintained open and free from demoralization.

(21) Answering paragraph XII of the bill, the defendants say that the averments of the said paragraph are so vague and indefinite that it is impossible for them to know therefrom to what order of the Secretary of the Interior the said paragraph refers or to what order of the Railroad Commission of Texas the said paragraph refers. The defendants aver that the operation and effect of the order of the said Railroad Commission now in force and effect is to prevent waste and to conserve oil, and they deny that the operation and effect of such order was or is solely to curtail the production of oil within the State of Texas, and they further deny the Secretary of Interior ordered the Railroad Commission of Texas to fix any allowable or make any allocation but allege that he only did and performed those duties imposed upon him under authority [fol. 45] of the President by Amended Section III of Article III of the Petroleum Code; and that the order of the Railroad Commission represents a valid determination by that body of the allowables set forth in the order of said Commission.

(22) Answering paragraph XIII of the bill, the defendants admit that the Secretary of the Interior heretofore issued an order effective December 1, 1933, promulgating certain price schedules applicable to petroleum and the products thereof, but they aver that the effective date of the said order has been extended by the Secretary of the Interior to January 1, 1934, and that said order provides

for hearings upon the said schedules of prices therein before the effective date hereof, at which hearings the complainants will be afforded an opportunity to object to the said order as a whole or in part. The defendants aver also that, in respect to the said order referred to in paragraph XIII of the bill, the complainants are not in any event entitled to injunction against these defendants, or any one of them and that the Secretary of the Interior is an indispensable party. The defendants aver also that sufficient facts are not alleged in the bill to show that the complainants have been or will be injured by the said order of the Secretary of the Interior. And the defendants aver that sufficient facts are not averred in the bill to entitle the complainants to any injunction on account of the said order relating to the fixing of prices. The defendants further aver that the said order of the Secretary of the Interior relating to the fixing of prices is in all respects legal and valid and avers that the complainants have not in any respect alleged its invalidity.

(23) Answering paragraph XIV of the bill, the defendants say that they are without knowledge as to whether the defendants referred to therein as State officers have informed the complainants that unless they comply with the [fol. 46] said orders of the Railroad Commission of Texas the said State officers will institute and prosecute against the complainants suits to recover penalities of $1,000.00 a day for each day that said orders are violated and will file information and cause the complainants to be arrested and prosecuted and will attempt to have fines and prison sentences inflicted on the complainants, and the defendants demand strict proof thereof insofar as such averments are material.

The defendants admit that they will perform their official duties with respect to violations by the complainants of Section 9 (c) of the National Industrial Recovery Act and the said executive orders of the President issued thereunder. They deny that irreparable injury will result to the complainants from any act of these defendants and deny that the complainants have no adequate remedy at law, and deny that they will institute and prosecute any civil or criminal action against the complainants except for violations by the complainants of a statute of the United

States or a valid order or regulation issued thereunder. The defendants deny that the defendant Ryan will institute or prosecute any action civil or criminal against the complainants, the institution and prosecution of such actions not being within the scope of his official duties.

(24) Answering paragraph XV of the bill, the defendants deny that they are engaged in a conspiracy to curtail the production of crude oil in Texas and the United States and deny that they have been so ordered by the Secretary of the Interior, and deny that any acts on their part or any orders referred to in the said bill are in furtherance of any conspiracy and deny that any such acts and orders are illegal, unwarranted, arbitrary, unjustified, null and void, and deny that any such acts and orders constitute an illegal, unwarranted, and unnecessary interference with the rights, liberty and property of the complainants, and [fol. 47] deny that any such acts will result in depriving the complainants of their property without due process of law or will cause the complainants irreparable loss or damage for which they have no adequate remedy in law.

(25) Answering paragraph XVI of the bill, the defendants say that the averments thereof are so vague and indefinite that it is impossible for them to know therefrom to which specific orders reference is made therein, but they deny that any orders of the Railroad Commission of Texas or of the President of the United States or of the Secretary of the Interior herein involved are invalid, illegal, null and void, and deny that any acts of the defendants in enforcing or attempting to enforce any such orders are illegal or unwarranted or a mere usurpation of power and authority.

Further answering subdivision (1) of paragraph XVI of the bill, the defendants deny that the National Industrial Recovery Act is null and void and denies that section 9 thereof is null and void upon any of the grounds averred to in the said paragraph or upon any other grounds.

Further answering subdivision (2) of paragraph XVI of the bill, the defendants aver that the orders of the President and the Secretary of the Interior herein involved are authorized by the National Industrial Recovery Act.

Further answering subdivision 3 of paragraph XVI of the bill, the defendants deny that Section 9 of the National

Industrial Recovery Act is void upon the grounds averred by the complainants or upon any other grounds.

Further answering subdivision 4 of paragraph XVI of the bill, the defendants say that averments thereof are so [fol. 48] vague and indefinite that it is impossible for them to determine to what orders reference is therein made. The defendants deny that any order of the Railroad Commission of Texas by its terms now in force and effect is unauthorized by law and deny that any such order was made without notice and without a hearing and deny that any such order is arbitrary, confiscatory and discriminatory, and deny that the enforcement of any such order deprives the complainants of their property without due process of law or of liberty of contract and deny that any such order deprives the complainants of the equal protection of the law in violation of the 14th Amendment of the Constitution of the United States.

Further answering subdivision 5 of paragraph XVI of the bill, the defendants deny that the statute of Texas therein referred to is void because of its operation and effect deprives the complainants and others affected thereby of their property without due process of law or because it denies to them the equal protection of the law contrary to the 14th Amendment to the Constitution of the United States, and deny that the operation and effect of the said statute of Texas is to burden interstate commerce in violation of the commerce clause of the Constitution of the United States, and deny that the said statute is so vague, indefinite, and uncertain that its meaning is not ascertainable, and denies that the said statute is invalid as an attempt by the Legislature of Texas to delegate power to regulate and curtail the production of oil, and deny that the said statute of Texas is void upon any ground.

(26) Answering paragraph XVII of the bill, the defendants deny that the penalty provisions of the National Industrial Recovery Act are null and void, and deny that the penalties prescribed therein are so excessive and disproportionate [fol. 49] to the offense to which they are assessed that they are a violation of the 14th Amendment to the Constitution of the United States, and deny that the said penalties are so extreme and drastic as to be calculated to affright those affected thereby from resorting to

the Courts to test the validity of the said Act, and deny that the terms and provisions of the National Industrial Recovery Act are so vague, indefinite and uncertain that it is impossible for those thereby affected to form any standard whereby they can safely know when they are violating the terms of the said Act; and the defendants aver that the National Industrial Recovery Act is in all respects legal and valid.

(27) Answering paragraph XVIII of the bill, the defendants deny that the penalty provision of the statute of Texas therein referred to and the Act of the 43rd Legislature of the State of Texas therein referred to are null and void for any reason therein set forth or otherwise.

(28) Further answering the bill, the defendants say that none of the orders of the Railroad Commission of Texas complained of in the bill and the enforcement of which is sought to be restrained and enjoined is now in force and effect, the said orders having been superseded by an order or orders issued by the said Railroad Commission subsequently to the date when this bill was filed, and the defendants aver therefore that with respect to the said orders complained of the complainants are not entitled to the relief prayed for.

(29) Further answering the bill, the defendants aver that, with regard to the orders of the Railroad Commission of Texas complained of, the complainants are not entitled to the relief sought for the reason that the statutes of Texas afford to the complainants the right to apply to a Court of [fol. 50] competent jurisdiction in Travis County, Texas, for a review of the said orders, and it does not appear from the averments of the bill that the complainants have exhausted the remedies thus afforded to them.

(30) Further answering the bill, the defendants aver that the complainants are not entitled to the relief sought against these defendants for the reason that sufficient facts are not averred to show that irreparable injury will result to the complainants from any of the matters and things complained of against these defendants.

(31) Further answering the bill, the defendants aver that the allegations thereof as a whole and in their entirety are so vague, indefinite, uncertain and redundant that

the defendants cannot ascertain therefrom with reasonable certainty the basis of the claim of the complainants for the relief sought against these defendants, and the defendants aver that a further and better statement of the nature of the said claim and further and better particulars of the complainants' alleged causes of action against these defendants ought to be ordered and the defendants pray that the Court so order.

And now having fully answered the said bill, these defendants separately and severally move that the bill and each separate paragraph thereof be dismissed and that these defendants be allowed to go hence with their reasonable costs in this behalf expended.

(Signed) Archie D. Ryan, (Signed) S. D. Bennett, (Signed) by Chas. I. Francis, (Signed) Phil E. Baer, (Signed) by Chas. I. Francis, Special Assistant to the Attorney General of the United States.

[fol. 51] Attorneys: Charles Fahy, First Assistant to the Solicitor of the Department of the Interior. Douglas Arant, Special Assistant to the Attorney General. Chas. I. Francis, Special Assistant to the Attorney General.

Duly sworn to by Archie D. Ryan. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 52] EXHIBIT 1 TO ANSWER

Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage

By virtue of the authority vested in me by the Act of Congress entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, (Public No. 67, 73rd Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order, prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited.

(Sgd.) Franklin D. Roosevelt.

The White House, July 11, 1933.

Exhibit 2 to Answer

Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage

[fol. 53] By virtue of the authority vested in me by the Act of Congress entitled "An Act to Encourage National Industrial Recovery, to Foster Fair Competition, and to Provide for the Construction of Certain Useful Public Works, and for Other Purposes," approved June 16, 1933, (Public No. 67, 73rd Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9 (c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

(Signed) Franklin D. Roosevelt.

The White House, July 14, 1933.

EXHIBIT 3 TO ANSWER

United States Department of the Interior

Office of the Secretary, Washington

The following general rules and regulations are prescribed in conformity with the requirements of the Act of Congress of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73rd Congress), and the orders of July 11 and July 14 of the President of the United States issued pursuant to such legislation.

[fol. 54]

Regulations

I

Under the terms of the aforesaid act and orders petroleum or the products thereof is in interstate and foreign commerce (1) when petroleum or any of the products thereof is in the course of shipment or transportation by rail, pipe line, water, truck, or any other means of conveyance from any State, Territory or District of the United States to any other state, Territory or District of the United States, or to a foreign country, or (2) when petroleum or any of the products thereof is in any quantity or in any manner commingled with petroleum or the products thereof some part of which is in the course of such shipment or transportation, regardless of how much commingling occurs during the various processes of shipment or refining. Excess production of petroleum or the products thereof under said act and orders includes petroleum produced in excess of proration quotas, oil-gas ratio requirements or any other purported conservation measure which tends to limit, directly or indirectly, the production of petroleum or the products thereof.

II

Any producer, operator, lessee, royalty owner, or other person, natural or artificial, having an interest in any petroleum producing property, or possessing any right, title, or interest in petroleum or the products thereof, who shall ship, transport, or deliver to another for shipment or transportation or shall acquiesce in the procuring or conspire with any other persons, natural or artificial, to procure the transportation in interstate or foreign commerce of any petroleum or the products thereof; or any person, natural or artificial, who shall receive for shipment or [fol. 55] transportation in interstate and foreign commerce, or shall purchase for shipment in interstate and foreign commerce any petroleum or the products thereof, with the knowledge that such petroleum was produced or withdrawn from storage in violation of any law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of a State, shall be deemed to have violated the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations thereunder and shall be subject to the penalties prescribed in the Act. And each transaction shall be deemed a separate offense.

III

Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases and shipments are in interstate and foreign commerce or in intrastate commerce.

IV

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifth day of each and every [fol. 56] calendar month, beginning with the period ending August 5, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following:

1. Residence and post-office address of producer.

2. Location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both the property and wells.

3. The daily production in barrels produced from each property and well.

4. A report of all sales showing the names of purchasers and transporting agencies, their places of business, and the quantity involved in each sale or shipment.

5. A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

V

Every purchaser, shipper, and refiner of petroleum or the products thereof, shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifth day of each and every calendar month beginning with the period ending August 5, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more [fol. 57] frequent intervals by the Division, which statement shall contain the following:

1. Residence and post-office address of purchaser, shipper, or refiner.

2. Place and time of receipt and the amount received, of petroleum and the products thereof.

3. The disposition of petroleum and the products thereof, including the place and time of sales, the amount sold, the destination and consignee.

4. A declaration that upon information and belief none of the petroleum and the products thereof handled has been produced or withdrawn from storage in excess of the

amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

VI

No transporting agency, whether by rail, pipe line, water, truck, or any other means of conveyance shall receive for transportation any petroleum or the products thereof unless the shipper shall furnish and the transporting agency shall receive in good faith an affidavit, sworn to before any duly authorized State or Federal officer, which shall contain the following:

1. Residence and post-office address of both the producer and the shipper.

2. A declaration that none of the petroleum shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or [fol. 58] other duly authorized agency of the State in which the petroleum was produced.

3. A recital of supporting facts including the number of barrels included within the shipment, a designation by wells or otherwise of the wells producing the petroleum shipped, the time during which such petroleum was produced and the rate of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production.

4. Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That carriers may receive from other carriers for such transportation and may transport any petroleum or the products thereof without requiring such affidavit and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same.

The affidavits required by this regulation shall be filed and kept subject to inspection by the Division of Investigations of the Department of the Interior.

VII

All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigation of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

[fol. 59]

VIII

All reports required by these regulations shall be filed with the Division of Investigations of the Department of the Interior in Washington, D. C., or with such regional agencies as may be from time to time designated by the Division of Investigations.

IX

Each and every false declaration in any statement under oath required by these orders and regulations, or each and every failure to file reports or to keep and maintain adequate records, as required by these orders and regulations, and any participation by any officer or agent of a corporation in any acts of commission or omission in performing the duties prescribed by these orders and regulations shall constitute a violation under the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

X

These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, aera, field, pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations may be by him at any time amended or changed in whole or in part.

Approved and promulgated this 15th day of July, 1933.

Harold L. Ickes, Secretary of the Interior.

[fol. 60] Copy

United States Department of the Interior

Office of the Secretary, Washington

The following changes, amendments and additions are hereby made in and to the regulations of July 15, 1933, prescribed to aid in the enforcement of the orders of July 11 and 14 of the President of the United States, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof, produced or withdrawn from storage in violation of State law or valid regulation issued thereunder:

1. Regulation IV is hereby amended to read as follows:

"Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State Agency for both property and wells.

[fol. 61] (3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees

or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.''

2. Regulation V is hereby amended to read as follows:

''Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner or processer.

[fol. 62] (2) The place and date of the receipt, the names and business address of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced."

3. Regulation VI is hereby amended to read as follows:

"No transporting agency whether by rail, pipe line, water, motor vehicle, or any other means of conveyance shall receive for transportation any petroleum or the products thereof unless the respective shippers and producers hereinafter described shall each furnish, and, the transporting agency or agencies shall receive in good faith, and without reasonable grounds for believing that any fact stated is untrue, affidavits sworn to before any duly au- [fol. 63] thorized State or Federal officer setting forth the information required by this regulation for the respective shippers or producers.

The following rules and classifications shall govern the furnishing of affidavits under this regulation:

Class "A" Shipments

Any shipment of petroleum, offered for shipment to any transporting agency, in the area where produced.

Class "A" shipments shall be supported by affidavits of both the shipper and the producer containing the following:

(a) The residence and post-office address of both the producer and the shipper.

(b) A declaration that none of the petroleum shipped has been produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) A recital of supporting facts, including the number of barrels included within the shipment, a designation of the properties producing the petroleum shipped, the time during which such petroleum was produced and the rate of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production, and wherever the State law or regulations thereunder limiting production apply to individual wells, then a designation of the wells from which such petroleum was produced and the number of barrels contained in the shipment produced from each well, together with the daily production of each well [fol. 64] during the period when such shipment was produced.

(d) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That if the petroleum offered for shipment was produced on or before July 11, 1933, and such petroleum has been acquired from any other shipper and/or producer and has been purchased or otherwise acquired from many sources and areas and has been so commingled that it is impossible for the shipper to furnish the facts required in sub-paragraph (c) above, the recital of facts required in such sub-paragraph (c) may be omitted and the following statement submitted in lieu thereof:

"(c) The date and place of each transaction involving the acquisition of petroleum so commingled subsequent to June 16, 1933; the name and business addresses of the producers and/or shippers from whom such petroleum was acquired and the amount of petroleum involved in each transaction.

(c2) A statement setting forth the reasons why the information requested in subparagraph (c) above can not be furnished."

Class "B" Shipments

Any shipment of the products of petroleum when such products are, after processing or refining, offered for shipment to any transporting agency, in the area where the petroleum, which has been processed or refined, was produced.

Class "B" shipments shall be supported by an affidavit of the shipper containing the following:

[fol. 65] (a) The residence and post-office address of the shipper.

(b) A declaration that the shipper did not acquire such petroleum or the products thereof with the knowledge that such petroleum had been produced in violation of any State law, rule or regulation or aid or abet any other person in so producing the same, and that to the best of his information and belief the products of petroleum shipped have not been derived from petroleum produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer or other duly authorized agency of the State in which the petroleum was produced.

(c) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these orders and regulations.

Class "C" Shipments

Shipments of petroleum or the products thereof, when such shipments are made from a point outside the area where the petroleum was produced.

Class "C" shipments need not be supported by affidavit.

Provided however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may tansport any petroleum or the poducts thereof [fol. 66] without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same.

Provided, further, That the provisions of this regulation shall not apply to shipments of the products of petroleum by rail in less than carload lots.

Provided, further, That where shipments of petroleum or the products thereof are offered for shipment in intrastate commerce and are subsequently in any manner diverted into interstate commerce, in whole or in part, the interstate carrier may not accept for shipment such petroleum or such products unless the provisions of this regulation are complied with.

Provided further, That the term "area where produced" as used in this regulation, when applied to the East Texas field, shall comprise the area included within an 80-mile radius of Kilgore, Texas and when applied to the Oklahoma City field shall comprise the area included with a 35-mile radius of Oklahoma City, Oklahoma.

The affidavits required by this regulation shall be filed by the transporting agency and kept subject to inspection by the Division of Investigations of the Department of the Interior.

4. The following additional regulation is hereby prescr-bed to be known as Regulation XI:

"In order to carry out the purposes of said Executive orders of July 11, and July 14, 1933, and of these regulations, the word 'petroleum' when used in these regulations, singly, and separate and apart from 'the products thereof' shall be understood to mean petroleum in its crude form; and the 'products or product of petroleum' or 'petroleum product or products' shall be understood to mean such [fol. 67] products of petroleum as are ordinarily shipped or transported by pipe line, tank car, tanker, tank trucks and gasoline, naphtha, fuel oil, kerosene, distillates, road oil, gas oil, blended gasoline, refined oil, and lubricating oil."

5. The following additional regulation is hereby prescribed to be known as Regulation XII:

"Such pipe lines and gathering systems as serve areas in which producers and/or shippers are required to furnish an affidavit or affidavits with the tender for shipment of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer not later than the fifteenth day of each and every calendar month beginning with Aug. 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month;

(1) The residence and post-office address of the pipe line or gathering system.

(2) The place and date of all receipts of petroleum, the names and business addresses of the producers and consignors (principals and agents) from whom petroleum was received, and the amount received of such petroleum from each producing property properly identified.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of consignees to whom delivered, and the amount of petroleum held in storage or otherwise at [fol. 68] the beginning and end of said calendar month.''

6. The following additional regulation is hereby prescribed to be known as Regulation XIII:

''When an affidavit and/or other sworn statement under oath is required by these regulations to be tendered or filed by any person, such affidavit and/or statement must be tendered or filed by the real party in interest owning, producing, purchasing, shipping, refining or otherwise dealing with the petroleum or the products thereof involved -n the transaction or transactions which are the subject of such affidavit or statement.

Provided however, That such affidavit or statement may be tendered or filed by a duly authorized agent of such real party in interest, when proof of such authorization has been filed with the Division of Investigations of the Department of the Interior on or before the date of the making or filing of said affidavit or statement.''

Approved and Promulgated this 25th day of July, 1933.
Harold L. Ickes, Secretary of the Interior.

United States Department of the Interior

Office of the Secretary, Washington

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the transportation in interstate and foreign commerce of petro- [fol. 69] leum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

1. Regulation VI is hereby suspended except in so far as it affects shipments of petroleum or its products from the East Texas and Oklahoma City areas, as hereinafter defined, when such petroleum has been produced in whole or in part in such areas or such products have been derived in whole or in part from petroleum produced therein.

2. The affidavits required by Regulation VI shall be furnished in duplicate.

3. The first general proviso to Regulation VI is hereby amended to read as follows:

Provided, however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may transport any petroleum without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same; provided, further, That with respect to the products of petroleum any carrier or carriers may receive from other carriers for such transportation such products if the affidavit required for Class "B" shipments is furnished to the originating carrier and due endorsement of its receipt is stamped upon the shipping papers.

4. The last general proviso to Regulation VI is hereby amended to read as follows:

[fol. 70] Provided further, That the term "area where produced" as used in this regulation, for the East Texas and Oklahoma City fields, respectively, shall include:

1. For the East Texas field, the counties of Upshur, Smith, Gregg, Cherokee, Rusk and Harrison in the state of Texas, and that portion of the State of Louisiana adjoining Harrison County which is included within the area described as follows (including boundary points named): Beginning at a point on the Louisiana-Texas State Line opposite the northeast corner of Harrison County, Texas, east to Mooringsport on the Kansas City Southern Ry.; thence southeast to Cash Point on the Texas and Pacific Ry. Co.; thence east to Vanceville on the St. Louis Southwestern Ry. Co.; thence southeast to Adner on the Louisiana and Arkansas Ry. Co.; thence south to Bodeau on the Illinois Central R. R.; thence southwest to Courtis on

the Louisiana Arkansas and Texas Ry. Co.; thence Southwest to Lucas on The Texas and Pacific Ry. Co.; thence west to Forbing on the Kansas City Southern Ry.; thence southwest to Keithville on the Southern Pacific Lines on The Texas and Pacific Ry. Co.; thence northwest to the southeastern corner of Harrison County at the Louisiana-Texas State Line; and thence to the point of beginning.

2. For the Oklahoma City field, the area within a 15-mile radius of Oklahoma City, Oklahoma.

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other [fol. 71] duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

7. Regulation XII is hereby suspended except in so far as it affects pipe lines or gathering systems serving the East Texas and Oklahoma City areas.

This order shall not affect any shipment in interstate or foreign commerce of petroleum or the products thereof, produced or withdrawn from storage in violation of State law or valid regulations issued thereunder, and the penalties prescribed by these regulations and the orders of July 11 and July 14, 1933, of the President of the United States issued pursuant to the authority vested in him by section 9(c) of the act of June 16, 1933, known as the "National Industrial Recovery Act", shall remain in full force and effect.

Approved and promulgated this 2nd day of August, 1933.

Harold L. Ickes, Secretary of the Interior.

United States Department of the Interior

Office of the Secretary, Washington

Regulation V of the regulations of July 15, 1933, as amended July 25, 1933, prescribed to aid in the enforcement of the orders of July 11, 1933, and July 14, 1933, of [fol. 72] the President of the United States, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in violation of State law or valid regulation issued thereunder, is hereby amended by the addition of the following sub-paragraph to follow sub-paragraph (4) in the regulation as amended:

"(5) Such other detailed information, necessary to identify properly the source of the petroleum or its products received, as may be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these rules and regulations."

Approved and promulgated this 21st day of August, 1933.

(Sgd.) Harold L. Ickes, Secretary of the Interior.

Exhibit 4 to Answer

Executive Order

Code of Fair Competition for the Petroleum Industry

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect [fol. 73] thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

Franklin D. Roosevelt.

Approval Recommended.

Hugh S. Johnson, Administrator.

The White House, August 19, 1933.

Exhibit 5 to Answer

Executive Order

Administration of the Petroleum Industry

Pursuant to the authority vested in me by Section 2 (b) of Title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act." (Public No. 67, 73rd Congress), and in accordance with Section 2 of Article I and Section I (b) of Article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and appoint, for the Petroleum industry, The Secretary of the Interior to be Administrator and the Department of the Interior [fol. 74] to be the Federal Agency, as provided by the aforesaid Act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal Agency, by such Act and such Code of Fair Competition.

(S.) Franklin D. Roosevelt.

The White House, Aug. 28, 1933.

In United States District Court

Amendment and Supplement to Original Bill—Filed Dec. 5, 1933

Amending and supplementing their original bill herein, the complainants allege as follows:

I

Since the filing of the original bill, the Railroad Commission of Texas has made, issued, promulgated and put into effect additional orders whereby they have reduced the allowable production for the East Texas oil field to such an extent that it is only permitted to produce each day 5.4 per cent of what its capacity is in an hour. Complainants allege as a matter of fact that while said orders purport to be based on the potential producing capacity of the wells, as a matter of fact no accurate test of the potentials of the wells has actually been made, the potential used by the Commission being an estimate which was arbitrarily fixed at a figure far below the actual potential producing capacity of the wells for the purpose of enabling the Commission to more effectively execute its program of curtailment.

[fol. 75]

II

Paragraph numbered III of the original bill is amended to read as follows:

In doing the acts and things and carrying into effect the orders herein complained of, the defendants, and each of them, claim to be acting under authority of and pursuant to powers conferred upon them by the Conservation Act of the State of Texas, and also under and by virtue of authority conferred by the National Recovery Act, but as a matetr of fact they and each of them are acting without any authority whatever, and without any intent or purpose of executing the aforesaid laws, or either of them, and they are mere trespassers attempting to enforce compliance with a scheme of proration hereinafter fully defined.

III

Paragraph IV of the original bill is amended by further alleging that at the time said agreement was entered into the Railroad Commission of Texas was composed of the Honorable C. V. Terrell, the Honorable Pat M. Neff and the Honorable Lon A. Smith. Since that time, the Honorable Pat M. Neff has been succeeded by the Honorable E. O. Thompson, but the said Thompson, has adopted the aforesaid agreement and joined with the said Terrell and Smith, and is aiding and assisting them in attempting to carry said agreement into effect.

IV

Complainants further allege that the aforesaid agreement embodies a program adopted by the Oil States Advisory Committee of the American Petroleum Institute, and that if these complainants are mistaken in their allegation that the Railroad Commission of Texas, and the individual members thereof, expressly entered into an agree- [fol. 76] ment to carry said program into effect, nevertheless they adopted said program, and in doing the acts and things herein complained of it has been their intent, and is now their intention, to carry said program into execution, without regard to the Conservation Laws of the State of Texas.

V

Further complaining, these complainants say that another purpose of said scheme of proration, as shown by its actual operation and effect, is to eliminate all competition in the mining, transportation, sale and distribution of petroleum and the products thereof, and by reason of the fact that the oil industry is now controlled by a few integrated companies, or associated groups of companies, the result of carrying said scheme into effect is to create an absolute monoply of the oil business in the hands of a group of integrated companies, which enables said monopoly to control the market demand and, as a consequence thereof, the amount of production, the price to be paid therefor, and also the distribution of the products of petroleum, as well as the price at which said products are sold to the consuming public, all of which is contrary to public policy, in violation of the Anti-Trust laws of the State of Texas and the United States.

The purpose and also the operation of said scheme has resulted in the destroying and eleminating of all foreign markets for crude oil produced in the United States, and particularly in the East Texas oil field, thereby depriving these complainants of a large market outlet which would otherwise be available. Said plan has also resulted and is now resulting in forcing independent refineries out of business, because it prevents those engaged in purchasing and [fol. 77] refining oil from exercising their liberty of contract to purchase oil in such quantities and at such prices as to enable them to operate at a profit, further destroying and depriving these complainants of markets and outlets for their oil which would otherwise be available.

A further purpose of said scheme of proration, as shown by its actual operation and effect, is to curtail the production of these complainants and all others similarly situated to such an extent that it is impracticable for them to utilize the numerous railroads serving the East Texas oil field as mediums of transportation for transporting their oil to market, thus compelling these complainants, and all other individual and independent producers, to depend upon the aforesaid monopoly for their sole market outlet, and depriving them of a large market outlet which would otherwise be available to them.

These complainants allege as a matter of fact that the entire scheme of proration herein complained of is a plan adopted by the aforesaid monopoly to enable it to acquire complete control and domination of the oil industry in the United States, and to eliminate all competition in said industry, and that the defendants herein named are being used as mere tools of said monopoly to carry said scheme or plan into effect, and that the claim of the defendants that they are attempting to enforce the Conservation Laws of the State of Texas is a mere pretense and subterfuge, because said scheme has no relation whatever to the conservation of the natural resources or preventing waste of any kind or character. In addition to not being authorized by the Conservation Laws of the State of Texas, said scheme is directly opposed to the provisions of that Act, which require the Railroad Commission of Texas, in promulgating and enforcing any orders, to take into considera- [fol. 78] tion the detriment or benefits that will accrue to the consuming public, for the reason that the maintaining of said monopoly is depriving the public of the benefits which they would receive as the result of free, open and fair competition, and the public is being filched and robbed of enormous sums of money because it is required to pay prices far in excess of the value of the products of petroleum.

VI

Complainants further allege that as another part of said plan of proration, the defendants Railroad Commission of Texas have prohibited all purchasers of crude oil and all pipeline companies from purchasing or transporting any oil produced by complainants in excess of the amount allowed by its order, and, unless enjoined from so doing, even though it should be held by this honorable court that the orders of the said Commission restricting the production of these complainants was void, and the defendants were enjoined from enforcing the said orders against these complainants, the complainants would obtain no relief because of the fact that the defendants would prohibit purchasers and pipeline companies from taking any additional oil from the complainants.

Wherefore, these complainants pray as set forth in their original bill, and, further, that the defendants, and each of them, their assistants, agents, servants and employees, be enjoined from interfering with any purchasers or pipeline companies, or other transportation companies, in purchasing, taking and transporting oil produced by these complainants.

Saye, Smead & Saye, W. T. Saye, Solicitors for the Complainants.

[fol. 79] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDMENT AND SUPPLEMENT TO ORIGINAL BILL —Filed Dec. 12, 1933

Come now the defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer, separately and severally, and for answer separately and severally to the Amendment and Supplement to the Original Bill herein filed in this cause, say:

(1) These defendants admit that since the filing of the Original Bill the Railroad Commission of Texas has made, issued, promulgated and put into effect an additional order regulating and controlling the production of the East Texas oil field, and in this connection these defendants allege that such order is a valid and lawful order under the laws of the State of Texas; that these defendants deny that said order is an arbitrary order fixed pursuant to any agreement or program for curtailment, as alleged in the Original Bill of Complaint herein filed, or in the supplement thereto, which is contrary to the laws of the State of Texas.

[fol. 80] (2) Answering paragraph II of the said Amendment and Supplement to the Original Bill, these defendants admit that they are acting under authority of and pursuant to powers conferred upon them by the National Industrial Recovery Act, the regulations of the Secretary of the Interior thereunder, pursuant to the Presidential authority and the Code of Fair Competition for the petroleum industry, but deny that they are acting or purporting to act under and by virtue of any authority conferred upon these defendants by any laws of the State of Texas, and these defendants specifically deny that they are without any authority under the aforesaid law, regulations and Code, and deny that they are trespassers in seeking to enforce compliance with said National Industrial Recovery Act, said regulations and the Code of Fair Competition promulgated for the petroleum industry.

(3) Answering paragraph III of said Amendment and Supplement to the Original Bill, these defendants demand strict proof of each and all of the allegations therein contained, insofar as same are material, and say that they have no knowledge of any such agreement as is therein mentioned.

(4) Answering paragraph IV of said Amendment and Supplement to the Original Bill, these defendants deny that any such agreement was made and demand strict proof of said allegations.

(5) Answering paragraph V of said Amendment and Supplement to the Original Bill, these defendants deny that the purpose of the said Railroad Commission in the promulgation of the aforesaid order is to eliminate all competition in the mining, transportation, sale and distribution of petroleum and the products thereof, and deny that such proration order tends to create an absolute monopoly of the oil business in the hands of a group of integrated com-[fol. 81] panies, and deny that the effect of such proration order is to enable any monopoly of the oil business to control market demand, the amount of production, the price to be paid therefor and the distribution of the products of petroleum, as well as the price at which said products are sold to the consuming public, and these defendants further deny that the said order of the Railroad Commission of Texas is contrary to public policy or in violation of the anti-trust laws of the State of Texas and the United States, and further deny that the purpose and effect of said order has been to destroy and eliminate all foreign markets for

crude oil produced in the United States and particularly in the East Texas oil field, and they deny that such order has unlawfully deprived complainants of any large market outlet which would otherwise be available but for said order, and further deny that said plan has resulted in forcing independent refineries out of business, but on the contrary, allege that except for said regulations there would be such unregulated and uncontrolled production of oil as that a condition would be created whereby all competition in the oil business would be eliminated, except among the strongest and best financed companies in the industry, as small producers and refiners would be unable to compete in a market where the production of oil exceeded all consumers demands.

Further answering the allegations contained in said paragraph V, these defendants further deny that the purpose and effect of said proration order is to curtail the production of complainants and others similar- situated to such an extent as that it is impracticable for them to utilize the numerous railroads serving the East Texas oil field as mediums of transportation for transporting their oil to market, and said defendants further deny that complain- [fol. 82] ants have been deprived of any large market outlet which would otherwise be available to them; and these defendants further deny that said order is any part of a scheme of proration, the purpose and effect of which is to bring under the control and domination of a monopoly the oil industry of the United States, and these defendants deny that it is the purpose and effect of said order to eliminate all competition in said industry, and deny that these defendants have been used as a mere tool of said monopoly to carry said scheme or plan into effect, and they deny that the effort of these defendants to enforce the Federal law, rules and regulations and the Petroleum Code is a mere pretense and subterfuge, and deny that said regulations have no relation to the conservation of natural resources; and they further deny that they are acting in any scheme to circumvent the purposes of the Texas Conservation Act, and deny that their actions are a detriment to the consuming public, as alleged in said paragraph.

(6) Answering paragraph VI of said Amendment and Supplement to the Original Bill, these defendants admit that they are endeavoring to enforce the provisions of

Section 9 (c) of tht National Industrial Recovery Act and valid orders and regulations issued thereunder and the Code of Fair Competition for the petroleum industry, but deny any knowledge of the vague and indefinite allegations contained in said paragraph VI.

Further answering the said Amendment and Supplement to the Original Bill as a whole and each paragraph thereof separately and severally, these defendants make their answer to the Original Bill a part hereof.

And now, having fully answered the aforesaid Bill and Amendment and Supplement thereto, these defendants, separately and severally move that said Bill as amended and supplemented, and each paragraph thereof, be dis- [fol. 83] missed and that these defendants be allowed to go hence with their reasonable costs in this behalf expended.

(Signed) Archie D. Ryan, S. D. Bennett, Phil E. Baer, by (Signed) Chas. I. Francis, Special Assistant to the Attorney General.

Attorneys: Charles Fahy, First Assistant to the Solicitor of the Department of the Interior. Douglas Arant, Special Assistant to the Attorney General. Chas. I. Francis, Special Assistant to the Attorney General, Assistant to the Solicitor of the Department of the Interior.

Duly sworn to by Archie D. Ryan. Jurat omitted in printing.

[fol. 84] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT AND SUPPLEMENTAL BILL—Filed Jan. 25, 1934

Come the complainants and by leave of the court file this their supplemental bill and amendment to their original bill, and for cause state:

That since the filing of their last supplemental bill, and since this case was tried and submitted to the court, the Railroad Commission of Texas, under date of December 28, 1933, issued, promulgated and put into effect another curtailment order, whereby the allowable production for the State of Texas was reduced to not to exceed 884,000 barrels, and the allowable for East Texas was reduced to approximately 402,000 barrels, and the allowable for complainants' wells fixed at five per cent of their hourly potential producing capacity; that this order, like all previous orders complained of by the complainants, was issued pursuant to and in furtherance of the illegal plan set forth in com- [fol. 85] plainants' bill, the purpose of said additional curtailment being to further restrict the production in East Texas in order that it will not exceed the figure fixed for East Texas by the Oil States Advisory Committee, and in order that the plan and scheme set forth in the original petition may be continued.

These complainants allege that this order is arbitrary and void for all of the reasons set forth in their original bill, and by way of amendment to their original bill they further allege as follows:

I

That each of the complainants deraign title to their respective properties set forth in the bill of complaint by mesne conveyances from the State of Texas; that under and by virtue of title granted to their predecessors in title, and which is now vested in complainants, the State of Texas has conveyed and these complainants have acquired title to all of the oil, gas and other minerals in, under and upon the lands covered by said conveyances, and under the terms and conditions of their muniments of title and the laws of the State of Texas they are the absolute owners of all the oil, gas and other minerals in and under said lands, and have the right to all of the oil and gas that can be produced and taken from said lands, and that the enforcement of the Conservation Laws of the State of Texas as they are now being enforced by the Railroad Commission impairs the obligation of contract, and deprives the complainants of their property without due process of law, contrary to the Constitution of the State of Texas and the Constitution of the United States.

II

Section g of Subdivision 1 of paragraph XVI of the original bill is amended to read as follows:

[fol. 86] "It is contrary to the eighth amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishments."

III

Complainants further allege that the attempted enforcement of the penalty provisions of the Conservation Act, and particularly Article 6036 of Vernon's Annotated Texas Statutes, and House Bill 844, Laws of 1933, 43rd Legislature (page 422, Chapter 165, Article 1112 B, Section 9, page 120, of Vernon's Annotated Revised Civil and Criminal Statutes of Texas, October 1933 Cumulative Pamphlet), and the acts of the defendants in compelling the complainants to make reports and give information and facts to be used as evidence to prosecute them, is in violation of Section 9, Article 1, Bill of Rights, Texas Constitution, and Section 10, Article 1, of the Bill of Rights of the Texas Constitution.

Wherefore, complainants pray as set forth in their original bill, and specifically for an injunction permanently enjoining the defendants from enforcing or attempting to enforce its order of December 28, 1933, and for general relief.

Saye, Smead & Saye, W. T. Saye, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO ISSUES, ETC.—Filed March 7, 1934

It is hereby stipulated and agreed by and between the attorneys for all of the parties in the above entitled action as follows:

(1) That the issues tried and determined in said above styled and numbered causes were those fixed by the pleadings of the complainant Amazon Petroleum Corporation, and the replies thereto by the defendants Archie D. Ryan, S. D. Bennett and Phil E. Baer.

(2) That all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed as described in Paragraph (1) above and that all evidence introduced by the defendants with reference to any one of the complainants should be considered with like force and effect as though introduced with reference to all of them.

(3) That said above styled and numbered causes were submitted before a Statutory Three-Judge Court under pleadings wherein said above named defendants were joined with certain State officials and at the time said cause was heard on application for temporary injunction it was stipulated that if it should be determined that said Statutory Three-Judge Court had no jurisdiction of the said named Federal defendants, the issues as between complainants and said named Federal defendants should be determined by United States District Judge Bryant upon the evidence introduced before said Statutory Three-Judge Court.

(4) That the evidence offered in affidavit form on the hearing for a temporary injunction should be considered by the Court having jurisdiction of said cause as the tes- [fol. 88] timony of the respective witnesses offered in evidence by the parties for the final determination of said cause on its merits.

In witness whereof, the attorneys of record have hereunto signed their names this 15 day of March, A. D. 1934.

(Signed) Saye, Smead & Saye, F. W. Fisher, Attorneys for Complainants. Edward Lee, Atty. Intervenor M. E. Trap. Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 89] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity No. 652

and

Consolidated Equity Cases Nos. 667, 505, 595, 621, 657 and 665

AMAZON PETROLEUM CORPORATION, BARNEY COCKBURN, E. J. BOASE, CHARLES M. COPE and W. C. TURNBOW PETROLEUM CORPORATION, Complainants,

vs.

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Defendants

Statement of Evidence Under Equity Rule No. 75—Filed April 2, 1934

Be it remembered that the cause above styled and numbered, together with the above numbered causes consolidated therewith, came on regularly for trial before the above Court sitting in equity on the 14th day of December, 1933, upon the issues formed by the Bill of Complaint and the Answer thereto, and thereupon came the complainants in equity cause No. 652, Amazon Petroleum Corporation, a corporation, Barney Cockburn, E. J. Boase, Charles M. Cope and W. C. Turnbow Petroleum Corporation, a corporation, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 667, Trans-State Corporation, A. H. Tarver, Pelican Natural Gas Company, Dimham Oil Corporation, Oriental Oil Company, K. E. Merren, Canico Oil Company, Adco Oil Company, Laco Production Company, Lexena Oil Corporation, and E. J. Moran, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 505, Ortiz [fol. 90] Oil Company, Inc., and Deere Creek Oil Company, with their attorney, F. W. Fischer; and came also complainants in equity No. 657, A. F. Anding, Southport Petroleum Company, a corporation, Ironrock Oil Corporation, a corporation, Independent Producers, a corporation, and W. Holloway, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 595, Imperator Oil Corporation, Overton Refining Company, Kilgore Refining Company, K. W. P. Witt, O. L. Hastings, A. N. Landers, W. M. McVey, T. W. Owen, J. Curtis Sanford, Roy Howell, Yandell Rogers, E. J. Bartels, W. H. Wilson, T. J. Whitesides, George T. Thaggard, Arrow Refining & Producing Company, Double L Oil Company, P. D. Bolen, Carl Dunham, J. M. Lapin, G. A. Franklin, and R. S. Harper, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 621, M. E. Trapp and McMurrey Corporation, with their attorneys, F. W. Fischer and W. Edward Lee; and came also complainants in equity cause No. 665, Coffman Production Company, a corporation. and Cemo Production Company, a corporation, with their attorney, F. W. Fischer; and came also the defendants, Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil E. Baer, United States Marshal for the Eastern District of Texas, with their attorneys, and announced ready for trial.

All of the evidence was introduced under a stipulation that all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed by the pleadings in Amazon Petroleum Corporation, et al., vs. Archie D. Ryan, et al., No. 652, and that all of the evidence introduced by the defendants with reference to any one of the complain- [fol. 91] ants should be considered with like force and effect as though introduced with reference to all of them.

Complainants' Case

Offers in Evidence

Complainants introduced in evidence various orders of the Railroad Commission of Texas, which provided a proration schedule for the production of oil from wells in Texas. The most recent of these orders was dated November 28, 1933, and limited the total production of oil in the State of Texas to 888,000 barrels per day and the wells in the East Texas Field to 5.4 per cent of their hourly potential producing capacity as determined by the Commission.

Complainants introduced various certificates of the Secretary of Interior certifying to the Railroad Commission of Texas the allowable production for the United States under the Code of Fair Competition for the Petroleum Industry, and also certifying to the Commission the proportion of the production allocated to the State of Texas. These allocations were certified by the Secretary of the Interior to the Commission beginning August 19, 1933, and continued down to the date of trial, the last allocation for the State of Texas being 880,000 barrels, and certified to the Commission on November 23, 1933. The complainants offered in evidence in the nature of letters and telegrams from the Secretary of the Interior to the Commission requesting and urging the Commission to put these allocations into effect and requesting the cooperation of the Commission in fixing as the total Texas allowable production the figure certified as a recommendation by the Secretary of the Interior as Administrator of the Code of Fair Competition for the Petroleum Industry.

Complainants offered in evidence exchange of correspondence and telegrams between the Commission and the [fol. 92] Secretary of the Interior and the orders of the Commission showing that beginning with August 19, 1933, and continuing up to the date of the trial, the Railroad Commission adopted as the total Texas allowable production a figure which was the same as the allocation certified by the Secretary of the Interior and the Commission made its orders in conformity therewith.

Complainants introduced in evidence statements by W. C. Turnbow, president of the W. C. Turnbow Petroleum Corporation; K. E. Merren, S. D. Hunter for the Pelican Natural Gas Company; George G. Moore, District Manager of the Dimham Oil Corporation; Claude Kavanaugh, D. S. Read, president of the Amazon Petroleum Corporation, and W. R. Smith, Chairman of the Board of Directors of the Oriental Oil Company, who stated that they, or the companies for which they spoke, are producers of oil in the East Texas oil field; that their wells are capable of producing many times their present allowable without any injury to the properties or the surrounding properties and without any waste of any kind whatsoever; that more oil could ultimately be obtained from their properties by operating on the best oil-gas ratio than under the present allowables; and that they have a present market demand for greater quantities of oil than they are at present permitted to produce. Mr. Smith also stated that the Oriental Oil Company, in addition to its producing properties, owns a refinery and nineteen filling stations; that the refinery is unable to obtain sufficient crude oil to operate it more than one fourth capacity due to the proration order; and that it will be forced to close down and discharge from employment one hundred and twenty-five employees unless it obtains relief within a reasonable time.

[fol. 93] Complainants introduced in evidence a statement by J. H. Bucklin and E. S. Weldon, who stated that they are employed by the Amazon Petroleum Corporation, one of the complainants, and the Niagara Oil Company; that on or about November 11th Mr. Behrens and Mr. Parrish, representing themselves to be agents of the United States Department of the Interior, Division of Investigations, appeared in the office of the above mentioned corporation and stated that they wanted and had been directed to secure from the file of said corporation, the records of all oil shipped by railroad from June 1, 1933 to July 15, 1933, with a statement of whether or not it was produced in accordance with the rules and regulations of the railroad commission; that said Mr. Behrens and Mr. Parrish made memoranda from the records of the destination and cost price of the oil handled during this period of time; that on a later visit said Messrs. Behrens and Parrish asked further information and wished to see vouchers or canceled checks for the payment of the oil shipped during this period; and that it was noticed that said Messrs. Behrens and Parrish had made note of the price which the above companies had paid for one of the shipments of oil, although said persons had been requested not to make any record of that price, since it represented a trade secret and although said persons had agreed not to use that information and to treat it strictly in confidence.

Complainants introduced in evidence a statement by **Mark Hare**, who stated that he is an employee of the Amazon Petroleum Corporation; that on various occasions, since December 1, 1933, one Mr. McGrath, who represented himself to be in the employ of A. D. Ryan and the Department of the Interior, has frequently entered upon the lease of the Amazon Petroleum Corporation; that many of these [fol. 94] visits have been in the day time and many at night; that on each visit he has appeared without permission and has gauged the tanks and inspected the lines and connections; and that said Mr. McGrath has also interrogated the lease man as to the potential tests, as to whether the wells are making b. s. and water, whether the same has been run through a centrifugal machine, and whether the tank of water on the lease was produced from the wells on said lease, all of the foregoing acts being without permission.

Complainants introduced in evidence a statement by L. B. **Manley**, J. H. **Bucklin** and E. S. **Weldon**, who stated that on October 10, 1933, L. B. Manley conversed with A. D. Ryan on the telephone, while J. H. Bucklin and E. S. Weldon listened at extension telephones to the conversation; that Mr. Manley asked Mr. Ryan if the Department of the Interior was assuming the police power in the East Texas Oil Field; that Mr. Ryan replied that he was cooperating with the Railroad Commission of Texas in such action; that Mr. Manley then asked if the Department of the Interior was assisting the Railroad Commission in gauging tanks and intimidating the men on the leases. Mr. Ryan denied the intimidation, but stated that he had the right to gauge the tanks without permission of the owner or owners and that he was do-ng that and would continue to do so; that Mr. Ryan also stated that he had two charges of overproduction on the lease operated by Mr. Manley and that he intended to turn the information over to the Railroad Commission, even though Mr. Manley plainly stated to Mr. Ryan that the well in question had been in the hands of a State receiver for some months and that he had nothing to do with the lease during that time; that Mr. Ryan further stated that though the total production for the period was under the Railroad Commission allowable, he had records of overproduction on certain days; that Mr. Manley ex-

[fol. 95] plained that this was caused by having to swab the well as a result of the poor operation of the property at the hands of the State receiver; and that at Mr. Manley's request, Mr. Ryan agreed to have his men desist from using abusive language to the men on the leases.

Complainants introduced in evidence a certified copy of the Code of Fair Competition for the Petroleum Industry and modifications thereto, and a certified copy of certain regulations promulgated by Harold L. Ickes on July 15, 1933, and amendments thereto, promulgated July 25, 1933 and August 2, 1933, which regulations are the same as those affixed to the Defendants' Answer as Exhibit 3.

Complainants introduced in evidence a letter from Archie D. Ryan to Sabinas Oil Corporation as follows:

"United States Department of the Interior.

Division of Investigations, Post Office Box 146, Tyler, Texas

October 30, 1933.

Sabinas Oil Corporation, P. O. Box 226, Longview, Texas.

GENTLEMEN: This office is in receipt of your E-B report for the month of September, 1933, filed with this office under Regulation IV of the Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 33.01 [fol. 96] barrels. Immediately advise this office in affidavit form your reasons for permitting this overproduction to occur.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

Complainants introduced in evidence a letter from Archie D. Ryan to Mr. O. G. Murphy, Trustee, as follows:

"United States Department of the Interior

Division of Investigations, Post Office Box 146, Tyler, Texas

October 30, 1933.

Mr. O. G. Murphy, Trustee, Route No. 6, Longview, Texas.

DEAR SIR: This office is in receipt of your E-B report for the month of September, 1933, filed with this office under

Regulation IV of The Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 176 barrels. Immediately advise this office in affidavit form your reasons for permitting this overproduction to occur.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

[fol. 97] Complainants introduced in evidence a letter from Archie D. Ryan to D. B. Read Pipe Line Company, as follows:

"United States Department of the Interior

Division of Investigations, Tyler, Texas

August 15, 1933.

D. B. Read Pipe Line Company, c/o D. B. Read, First National Bank Bldg., Henderson, Texas.

Gentlemen: Advise me fully as to the pipe lines owned and controlled by you or the extent of interest claimed by you in any pipe lines or gathering systems serving any connections in the East Texas Oil Field showing the names of the lines and the amount of stock owned by you in any corporation or company, giving the names and date that such corporation took over the properties from the other owners or corporation.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

On request of the complainants, counsel for the defendants made the following admission for the record:

"Yes, I admitted at the outset and now admit that each and all of the parties defendant here and Mr. Ryan in particular, are carrying out as against these plaintiffs and will [fol. 98] carry out each and all of the duties imposed upon them under and by virtue of the regulations of the Department of the Interior that have been introduced in evidence. I admit that if we find violations from among any of these parties here, and that we have found some among them, of Article 3 of the Code, that we intend to prosecute them for violation of those sections of the Code which provide that if one produces above the allowable production that is fixed or allocated to him by the State Railroad Commission and the evidence justifies it and the United States District Attorney thinks that the evidence does justify a case, he is going to prosecute him. We have evidence that most of these people here are violating them and we intend to start some prosecutions. * * * Now, in addition to that, we are also requiring a system of reports from producers and refiners, as is set out in order that we may get therefrom information with which to enforce the provisions of Section 9C, which is the transportation act."

Complainants introduced in evidence a statement by R. J. McMurrey, President of The McMurrey Corporation, one of the complainants, who stated that The McMurrey Corporation is the owner and operator of twenty-three producing oil wells in Rusk and Smith Counties; that said corporation sells and delivers the oil produced in tanks located upon the leases and has no control whatsoever over said oil after the same is gauged in the tanks and run into the pipe lines of the purchasers connected to its tanks. He further stated that A. D. Ryan has demanded reports from The McMurrey Corporation, as called for in Regulations IV; that said corporation has failed and refused to make such reports and to keep its books open for inspection by the [fol. 99] Agents of the Department of the Interior; that the Department of Justice has instituted criminal proceedings against him, which are now pending, and that Chas. I. Francis, has threatened and intends to prosecute him under the complaints already filed and has threatened and intends to file additional complaints against him if the said corporation continues to fail or refuse to comply with said Regulations. He further stated that Chas. I. Francis has threatened and intends to prosecute said corporation and him as its President for the violation of penal provisions of the Petroleum Code if the said corporation produces from any well on any day more oil than it is permitted to produce from such well under the orders of the Railroad Commission. He further stated that the defendant A. D. Ryan and his agents have heretofore gone upon the oil leases of the McMurrey Corporation without the consent of said corporation, or any of its officers, or agents and over their objection and protest, and have inspected its property and gauged its tanks for the purpose of ascertaining whether or not said corporation is producing more oil than that allocated to it by the Railroad Commission; that defendant Ryan has threatened to continue such acts; and that if evidence is found by said visitations and inspections that the plaintiff is producing more oil than is allocated to it by the Railroad Commission, Chas. I. Francis has threatened that he will use such evidence upon which to predicate a criminal complaint for the violation of the provisions of the National Industrial Recovery Act and the Petroleum Code.

Complainants introduced in evidence statements by A. H. Tarver, E. J. Moran and Barney Cockburn, who stated that they are producers of oil in the East Texas Oil Field; that their wells are capable of producing many times their present allowable without any injury to the properties or to the surrounding properties, or to the reservoir; that [fol. 100] more oil could ultimately be obtained from their properties by operating on the best gas-oil ratio than under the present allowables; and that they have a present market demand for greater quantities of oil than they are permitted to produce.

Complainants introduced in evidence a statement by J. H. Wright, who stated that he is employed by T. O. Wright on the Amazon Petroleum Corporation's T. O. Wright lease as a royalty gauger; that from time to time persons representing themselves to be agents of the Department of the Interior, Division of Investigations, have been to see him and demanded that he submit to them his reports and records, regardless of the dates which they covered, as to the oil runs made from the wells on the above described leases; that on December 12, 1933, an Agent of the Department of the Interior, Division of Investigations, demanded that he bring said reports and records to the office of A. D. Ryan and that on doing so he was questioned by Agents of the said Department as to the various oil runs made from the aforesaid lease and wells and was particularly questioned as to the price paid for said oil, especially as to the interest and transactions of the Amazon Petroleum Corporation.

Complainants introduced in evidence a statement by M. E. TRAPP, an intervenor in this action, who stated that he is a producer of oil in the East Texas Oil Field; that all of his production is sold in tanks on the respective leases where it is produced; that no oil is produced under contract for transportation in interstate commerce and that all deliveries are made from storage tanks on the respective leases. He further stated that he has obeyed all of the orders and regulations of and made all reports required by the Railroad Commission.

Complainants introduced in evidence statements that the [fol. 101] following producers flow the oil produced from their wells into stock tanks upon their leases and from those tanks into the lines of the Pipe Line Companies or purchasers who purchased the oil and that title to the oil passes from the producers to the purchasers as and when the oil is delivered to the pipe line companies and that the producing company has nothing to do with the transportation or disposition of the oil after it has been delivered to the purchasers.

Statement by	Producer
Fred J. Adams	Adco Oil Company
W. C. Turnbow	W. C. Turnbow Pet. Corp.
Chas. M. Cope	Chas. M. Cope
A. H. Tarver	A. H. Tarver
Barney Cockburn	Barney Cockburn and E. J. Boase
W. R. Smith	Oriental Oil Co.
Claude Kavanaugh	Trans-State Corp.
S. D. Hunter	Pelican Natural Gas Co.
George C. Moore	Dimham Oil Corporation
K. E. Merren	K. E. Merren
D. B. Read	Amazon Pet. Corp.
J. O. Ehlinger	Canico Oil Company
George W. Lyles	Laco Production Co.
Sam Cook	Lexena Oil Corp.

Defendants' Case

The defendants introduced in evidence a statement by Victor Von Szeliski, who stated that he is Assistant Chief and Chief Statistician of the Division of Economic Research & Planning of the National Recovery Administration; that he received the Bachelor of Arts degree from the University of Wisconsin in 1921; that he attended the graduate schools of the Catholic University of Washington, D. C. (1921-22) of the University of Wisconsin (1922-23) [fol. 102] and of Columbia University (1923-25) and that he has been employed by the United States Rubber Company, Federal Reserve Bank of New York and Lehman Corporation, being in each case engaged in commercial and economic research. He further stated that the National Industrial Recovery Administration was necessitated by the serious national emergency confronting the country in 1932 and 1933; that in the emergency the railroads handled 250 billion ton-miles of freight in the twelve months preceding March, 1933, compared with 450 billion tons in 1929; that the banking system was closed down because its assets became frozen; that at least 25% (12 million) of those employed in 1929 were out of work in 1933; that wage rates decreased, prices dropped and bankruptcies occurred; that public and private relief programs amounted to over one billion dollars in 1932; and that, though certain industries held up, in others wage rates and prices went lower in a self-regenerating chain of cause and effect, the so-called "descending spiral." He further stated that during the depression wages fell so that in February and April, 1933, many sections of American industry paid less than $12.50 a week ($650.00 per year), for example: food manufacturing industries $12.18; a large branch of the Textile Industries $9.89; another branch of the Textile Industry $12.06; a third branch $11.69; one branch of the clothing industry $9.47; another branch $9.16; one branch of the metal products industry $12.18; another branch $12.22; one industry making household articles $11.96; one branch of the house furnishing industry $12.60; one branch of forest products industry $10.39; another industry closely allied to lumber products $10.28. He further stated that the purposes of the National Industrial Recovery Administration are:

First: "To remove obstructions to the free flow of inter- [fol. 103] state and foreign commerce which tend to diminish the amount thereof; * * * to promote the fullest possible utilization of the present productive capacity of industries; * * * to increase the consumption of industrial and agricultural products by increasing purchasing power; to reduce and relieve unemployment."

Second: To reform, rehabilitate and reorganize industry, or, in the words of the Act,

"To provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; to induce and maintain united action of labor and management under adequate governmental sanctions and supervision; to eliminate unfair competitive practices; * * * to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Third: By implication to restrict production in the few instances where it may be desirable, this implication being drawn from the following words in the Act:

"To avoid undue restrictions of production (except as may be temporarily required)."

He further stated that though it is a commonly accepted theory that overproduction is adequately controlled by a fall in prices which automatically reduce production, this is not true in certain industries, as in the petroleum industry, for the following reasons:

First: A large number of independent competitors strive to secure enough business to keep their plants in operation when prices fall, thus adding to the production rather than reducing it.

Second: Fixed charges on the investment and the fact [fol. 104] that oil must be taken from the ground in order to prevent others from taking it, result in price not being a controlling factor in the production of petroleum.

Third: A drop in the price of oil does not result in an increase in demand to any extent.

Fourth: Other factors besides price, such as national income and the physical requirements of motor vehicle transportation, determine the demand for petroleum products; and that it is therefore necessary for there to be government regulation of petroleum production in order to prevent overproduction.

He further stated that the wage scale in the petroleum industry cannot successfully be raised unless overproduction is curbed so that producers can receive an adequate return on their investment.

The defendants introduced in evidence the statement of SOLOMAN BARKIN, who stated that he received the degree of Bachelor of Social Science from the College of the City of New York in 1928, the degree of Master of Arts from Columbia University in 1929; that he has been an instructor in Economics at the College of the City of New York since 1928; that he was Assistant Director of Research for the New York Commission on Old Age Security in 1929-30 and Assistant Research Director on the Continuation Committee for the New York Commission on Old Age Security; that he was Special Consultant on the President's Committee on Special Trends in 1932 and that he has been Technical Labor Adviser of the National Recovery Administration in 1933; that he is the author of two books on Old Age Security, namely "Old Age Dependency" and "Older Workers in Industry"; and that, through this experience, he has become fully conversant with the problems of labor [fol. 105] and with prevailing conditions prior to and during the administration of the National Recovery Administration. He further stated that the collapse of the industrial structure and unbridled competition resulting in profitless production and excessive losses had brought about an increasing inability on the part of industry to maintain the work force and an increasing demand to lower the return to labor; that as the depression continued, unemployment increased to an estimated number of 3,200,000 in 1930; that in March, 1933, only 55% of those employed in the manufacturing industry in 1926 remained on the pay roll; and that in the following industries employment in 1933 amounted to the following percentages of those employed in 1929:

Industry	Percentage of 1929 employment	Months in 1933 used as measure
Anthracite Coal	40%	June
Bituminous Coal	61.2	May
Quarrying	34.8	February
Crude Petroleum Producing	56.5	March
Telephone & Telegraph	68.1	August
Power & Light	76.9	March
Motor Bus & Elec. Railroad	69.1	May
Wholesale Trade	73.1	March
Retail Trade	71.4	March
Hotels	71.9	April
Canning & Preserving	33.2	March
Laundries	73	March
Dyeing & Cleaning	70.9	February

He further stated that total unemployment reached an estimated number of 13,689,000 upon whom millions of others depended for sustenance and maintenance; that many of those retaining employment were very irregular so that the average number of hours per week dropped [fol. 106] from 49.1 hours in the first quarter of 1929 to as low as 33.2 hours per week; that at the same time workers were employed for unlimited and unregulated numbers of hours per day resulting in sweat shop conditions and reducing the high standards of working conditions of American labor. He further stated that hourly rates of wages between 1929 and 1932 were reduced, according to the United States Bureau of Labor Statistics, some 20% and, according to other estimates, from 20 to 30%, and that in some cases wages have fallen to as low as 5¢ an hour, or 50¢ for a full day's work of ten hours; and that the weekly earnings of workers in the manufacturing industries averaged $27.50 in 1929 and $15.87 in March of 1933. He further stated that one of the chief purposes of the National Recovery Administration is to restore the position of the worker.

The defendants introduced in evidence a statement by J. Howard Marshall, who stated that he is a member of the Petroleum Administrative Board of the Department of the Interior; Assistant Solicitor of the Department of the Interior, and a member of the Stabilization Committee of the Petroleum Division of the American Institute of Mining and Metallurgical Engineers; that he is the author of articles dealing with the petroleum industry and has been engaged for the past four years in making a special study of the economic and legal aspects of proration as applied to the oil industry; and that he is the author of special studies on the legal and economic aspects of oil proration. He further stated that interstate commerce in petroleum and its products is carried on between all of [fol. 107] the State of the United States and between the United States and foreign nations; that the petroleum industry is the nation's third largest industry, employing over a million men and having a capital investment of from twelve to fifteen billion dollars; that the entire industrial system of the United States literally runs on oil; that petroleum is a wasting asset, limited in amount and for which there is no known substitute; that crude petroleum is produced in large quantities in eighteen states, but principally in the States of California, Texas and Oklahoma; that petroleum is produced by piercing the cap rock which has trapped confined crude petroleum, usually together with natural gas and water; that in the early stages of production of a well the natural pressure brings the oil to the surface, but that the well changes from a "flush" well to a "pumper" or "stripper" well when the pressure decreases and it becomes necessary to raise the oil to the surface by the use of pumps. He further stated that oil in the underground reservoir is fugitive in nature and may be brought to the surface through wells drilled in various parts of the pool so that one well drains from all parts of the reservoir; that the oil is further commingled when it is brought to the surface and shipped through common pipe lines or mixed with other oil by truck, rail or water carrier; that refining centers are connected with a number of sources of supply and commingle the oil received from such sources; that many petroleum products are moved from refining center to refining center and the products further intermingled; that petroleum products are further intermingled during distribution and consumption; and that there is practically no point in the entire process of movement from well to consumer anywhere in the United States which is not physically interconnected and interrelated with a whole series of other points in the [fol. 108] chain of commerce of petroleum and its products between the States and with foreign nations. He further stated that at least 90% of all the petroleum and products thereof produced in the United States is produced with the expectation and is actually shipped into interstate and foreign commerce, and that it is almost never possible, after petroleum leaves the well, to ear-mark the ultimate destination of all the many products which will ultimately be refined from it.

He further stated that in addition to the physical interconnection existing between wells within a pool, pools and fields within a state, and states as between states, there is an economic interconnection and interrelation, due to the fact that 60% of the petroleum and products thereof sold to the ultimate consumer in the United States is brought to the market by integrated companies which produce, transport, refine and market petroleum and its products; and that the action of any ostensible local unit of the industry directly affects the economic position of these large intergrated companies operating in the said trade area and is transferred throughout those companies so as directly to affect commerce in petroleum in and between all the various states in which those companies operate. He further stated that the fact that drainage can and does take place as between different operators in all of the various oil pool distinguishes the production of oil from all other mining operations since any single operator has the power to set the rate of taking for all other operators draining from the same source of supply in order that they may acquire their fair share of the oil in the common pool; that this leads to a wild scramble on the part of all producers from a common source of production; that with the discovery of the new pools near Oklahoma City, the Kettleman Hills Field in California and the enormous pool in East Texas, the potential production of petroleum ex- [fol. 109] ceeds by many millions of barrels the consumptive demand thereof; that geologists and petroleum engineers all agree that the flush condition from these pools will decline and that the large potentials are abnormal and of temporary duration; that the control of the individual well is the focal point for the purpose of protecting the normal movements of commerce in petroleum and the products thereof, and that when the control over the individual wells breaks down, as it has in the past in Oklahoma and East Texas, interstate commerce in petroleum is disrupted and the normal flow from other states is impeded.

He further stated that whether an individual operator produces oil which moves in interstate commerce or not, he affects interstate commerce when he refuses to abide by curtailment, for there are always those in any large field who do and must move the product of their wells in interstate commerce, and these operators must either abide by curtailment and see their lands drained or they must violate the curtailment program and place on the interstate market their excess production; that unless the integrated companies are limited in their production of oil, they will be able to produce from their own wells all of their crude oil requirements, thus eliminating the present market which many small producers have in sales to the integrated companies; and that conditions in the East Texas Field during the past year have showed that uncontrolled production leads to monopoly and hardship to small producers. He further stated that any production of oil in excess of normal consumptive requirements exerts a demoralizing effect upon interstate commerce in petroleum, even though such excess production does not move beyond the confines of the State, since it makes its appearance on the market as "distress" gasoline, compelling competitors [fol. 110] to seek markets in other states by price cutting or dumping; that excess oil production during the last few years in one or two fields in Texas and Oklahoma has demoralized the markets for petroleum and gasoline as far West as the Pacific Coast, as far North as Chicago and as far East as New York and that the chaotic condition and other demoralization of the oil industry existing just prior to the adoption of the Code of Fair Competition reacted adversely upon the flow of interstate commerce and the industry generally by decreasing purchasing power and throwing out of employment many of those in and related to the industry. He further stated that the restriction of production to balance consumptive demand has restored the normal flow of interstate commerce in petroleum and that without the maintenance of such control there is grave danger that uncontrolled production from any of the flush fields in Texas, Oklahoma or California might completely prevent the flow of interstate commerce from any one or all of the other states.

He further stated that uncontrolled production results not only in disruption of the free flow of interstate commerce, but also in physical waste because it results in inefficient refining methods which extract only 20 to 25% of the gasoline content from crude oil, in the abandonment of wells and fields of settled production in other oil producing states and in the loss of natural gas and natural gasoline. He further stated that the events of the past few years have demonstrated that the states alone cannot embark upon a proper conservation program, since any one of the large producing states can absorb the portion of the national market which restrictions on production in the other states leave open; that when enforcement broke down in the East Texas Field it completely demoralized the conservation program in Oklahoma City; and that it is essential from a national point of view that a program of con- [fol. 111] servation be carried out, since there is but ten years of known supply of crude petroleum and not only commerce but also the national defense depend upon this supply.

The defendants introduced in evidence a statement by W. B. Hamilton, who stated that he has been engaged in the oil business for about eighteen years; that he is interested in production and leases in the East Texas Field—22 wells in Conroe—four wells, and in the South Texas, North Texas, Panhandle and Central West Texas Field; that he also owns producing royalties in East Texas, South Texas, North Texas and the Panhandle; that he was formerly President of the Texhoma Oil and Refining Company, a large independent oil refinery; that he was Vice President of the Texas Division of the Mid-Continent Oil and Gas Association for many years and also Vice President of the Western Petroleum Refiners Association; that he is a graduate of the University of Texas and held a graduate fellowship and taught in the Government Department of the University of Texas; that while President of the West Texas Chamber of Commerce he made a careful study of production in West Texas, with reference to conservation, and as Chairman of the Oil & Gas Committee he has made a careful study of marketing of crude petroleum and gasoline, particularily with relation to West Texas; that he has operated in many of the major pools of the Southwest and is familiar with the production, transportation, refining and marketing of oil; and that he is familiar with the theory and practice of petroleum engineering.

He further stated that the Petroleum Industry is one of the large industries in the United States, with an investment of approximately twelve billion dollars; that in 1932 eight hundred million barrels of oil were produced and four [fol. 112] hundred million barrels of gasoline; that there were about three hundred twenty-five thousand producing wells scattered over four million acres of oil lands in nineteen states; that there were four hundred refineries and approximately three hundred and twenty-five thousand marketing outlets; that oil is a vital factor in the economic and social life of the United States in supplying over twenty-five million motor vehicles, as well as warships and airplanes; that its products find their way into the manufacture of many commodities necessary in the daily life of the people; and that petroleum is as essential to national defense so that the entire nation is concerned with its conservation.

He further stated that about twenty integrated companies, whose activities encompass the entire industry, produce about fifty per cent of the crude oil, control sixty-three per cent of the refining capacity and ninety per cent of the pipe line systems, and either own, lease or control the greater part of the market outlets; and that there is the fiercest sort of competition throughout the industry, particularly in the retail end of the industry. He further stated that ninety-five per cent of the country's crude oil is produced from the states of Texas, California, Kansas, Oklahoma, Louisiana, and the states bordering the east of the Rocky Mountains; that a large part of the western production is transported to the large consuming areas in the East, where it is refined and where seventy per cent of the gasoline produced in the country is consumed; that the northeastern states consume about thirty-six per cent of petroleum products and that in many instances where oil is refined in Texas and Oklahoma, the refining operation is not completed there, but the oil shipped East for additional refining into various by-products.

He further stated that only fifteen per cent of the oil produced in Texas is consumed there, while eighty-five per [fol. 113] cent of the petroleum, or the products thereof originating in Texas, move in interstate commerce; that to the stream of commerce almost every producer and refiner in Texas contributes to some extent; that for practical purposes it is nearly impossible in the petroleum business to separate strictly interstate transactions from those intrastate in nature, because the whole is interrelated so that it can truthfully be said that the petroleum business is a national one whose bounds go beyond state lines; that conditions existing in a particular field immediately and directly affect producing, refining and marketing in widely scattered areas over many different states, for example, excess production from flush wells in Texas causes the abandonment of stripper wells in Oklahoma; that the business of marketing petroleum and its products is so interrelated that an unbalanced supply in any area immediately reacts and reflects upon reproducing and refining and marketing movements in many states; that it is definitely proved that the prohibition of excess oil from transportation in interstate commerce, as provided by Section 9 (c) of the National Industrial Recovery Act, is not only beneficial to the industry as a whole, but is necessary as a regulation of interstate commerce if overproduction is to be stopped; that a central authority to ascertain national consumptive demands for controlling products as povided by Article III Section 4 of the Code, is necessary to stabilizing commerce, since it is impossible for the individual states to divide national consumptive demands among them without supervision, and that when a state's fair share of the market is determined and submitted to the state regulatory body for consideration in fixing the allowables for the state, a fair method is used by which the orderly flow of interstate commerce is insured.

He further stated that there has been widespread waste [fol. 114] of the oil reserves due to lack of correlation between the states' conservation policies and to the fact that oil is of a fugitive nature leading to a race for capture regardless of demand or price; that such competition for production occurs in every field and that eventually the states themselves indulge in the same race for capture of the nation's demand; that oil thus wasted is forever lost; that stripper wells are abandoned; and that Section 9 (c) of the National Recovery Act and Article III of the Petroleum Code are measures which will regulate the business in such away as to prevent such disruption of interstate commerce and waste of a national resource.

He further stated that overproduction results in lowering the price structure; that in recent years prices have twice dropped from a high of $1.40 to $.25 a barrel; that in the East Texas Oil Field the price reached as low as $.10; that such overproduction resulted in "distress" gasoline being placed upon the market at prices far below actual cost; that overproduction beyond consumer demand causes price cutting, rebates, and unfair marketing practices in general throughout the nation; that overproduction is usually followed by under-production because of depletion of the pools with resulting high prices to the detriment of the public; that price fluctuations exert an abnormal influence on interstate commerce; that restricting production to market requirements benefits both producers and consumers, promotes the orderly flow of interstate commerce, and conserves natural resources; and that the provisions of Article III of the Petroleum Code are effective as a means of regulating and controlling the disastrous conditions above outlined.

He further stated that the large integrated companies are better able to weather final price fluctuations than small [fol. 115] producers, refiners and marketers and that therefore unregulated production tends to produce monopoly.

He further stated that "hot" oil is ordinarily secretly delivered to refineries in the locality where produced and at a price substantially below the established posted price for crude oil in the locality, for example $.40 per barrel, while the posted price is $1.00 per barrel; that refiners, purchasing "hot" oil have been able to manufacture gasoline at a much less cost than the cost of the legitimate refiner and can, therefore, undersell legitimate refiners in the market; that such underselling leads to a nation-wide price cutting spreading from community to community and from state to state; that gasoline from "hot" oil by East Texas refineries has depressed the tank wagon price of gasoline in North Texas and in Oklahoma to a point below the cost of production; that gasoline can be refined from crude oil with a plant requiring the investment of a very small sum of money, but that the output of such plant can disrupt the entire price structure throughout the country; that a tender for sale of not more than five cars of gasoline by a refiner in North Texas at ''distress'' prices has in the past broken the tank car market throughout the mid-continent area, and that Section 9 (c) of the National Industrial Recovery Act and Article III of the Petroleum Code are effective means for preventing the above mentioned evils.

He further stated that he knows of no way to check these sources of ''hot'' oil except by a series of reports from producers and refiners and that this method is a certain, useful, practical and reasonable method of locating the origin of ''hot'' oil, and its products which move in interstate commerce.

He further stated that a fair and reasonable method of fixing the total allowable production for the State of Texas [fol. 116] is to fix the maximum at the figure recommended by the Department of the Interior since such figure, in his opinion, represents a fair allocation of the Texas proportion of the national consumptive demand; that the provisions of the Petroleum Code are fair and reasonable regulations of a business which is essentially national in its nature and that it is — alleviate the economic distress which has befallen the oil industry and the nation as a whole; and that it has helped prices, decreased unemployment and added to consumers' purchasing power.

The defendants introduced in evidence a statement by **Roy B. Jones**, who stated that he is President of the Panhandle Refining Company; that he has been engaged in the business of producing, transporting, refining and marketing crude oil and its products for about twenty-one years; that he is familiar with the various oil fields of Texas and the usual methods of developing such fields and by which the oil is thereafter transported, refined and marketed; and that in addition to his practical experience he has made a careful study of the oil business throughout the United States and has served upon numerous committees of various local, state and national associations and in such capacity has acquired detailed knowledge of the conditions existing in various branches of the oil business and the problems arising in connection therewith, and he further stated in substance the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement by J. S. Bridwell, who stated that he is the President of the [fol. 117] North Texas Oil-Gas Association composed of independent oil operators of North Texas; that he owns the Bridwell Oil Company, which has production in East, North and Southwest Texas and Southern Oklahoma; that he has been engaged in the oil business for about fifteen years; that he has served on special committees of various oil associations for many years, engaged in the study of the problems of the oil business; that he is now producing on his holdings about 1,500 barrels of oil per day; and that he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith. He further stated, in substance, the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement of C. L. Thompson, who stated that he is a graduate mining engineer; that from 1914 to 1917 he did general geological work in structural mapping of prospective oil structures; that in 1917 he began drilling contracting and has personally drilled and supervised the drilling of some sixty-five wells in various states and has been connected with producing, refining and operation of oil properties in various states; that he is now engaged in producing oil in the East Texas Field, operating 19 wells; and that by his study and experience, he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith. He further stated in substance the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

[fol. 118] The defendants introduced in evidence a statement by J. D. Collett, who stated that he is President of the O'Keefe & Collett Corporation, an oil producing company; that he is also operating as an individual producer; that he first became active in the oil business in 1901; that since 1917 he has devoted his entire time to and has been continuously interested and active in the management of oil properties; that during the past fifteen years he has had access to the current statistical reports conditions and has been a student of conditions pertaining to the oil business and that by his study and experience he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith.

He further stated in substance the same matters as are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement by Wirt Franklin, who stated that he has been engaged in various branches of the oil industry for twenty years and has been for six years an official of the Wirt Franklin Petroleum Corporation, a corporation engaged in the producing, refining and marketing divisions of the industry; and that he is particularly familiar with the production and marketing of crude oil and with the refining and marketing of refined products thereof.

He further stated that for the past twenty years new oil fields of large production have been discovered from time to time; that the production from such fields has been [fol. 119] practically unrestrained; that the invariable result of bringing in a new field has been that within a short time the price of crude oil has been materially reduced with unfavorable reactions upon the production, marketing and sale not only of crude oil, but also of the refined products; and that the following are a few of the large number of instances where new fields have resulted in drastic reductions in the price of crude petroleum:

First: In 1913 and 1914 the Cushing and Healdton pools in Oklahoma reduced the posted price of crude oil from $1.05 per barrel to 30¢ per barrel for Healdton crude and 40¢ per barrel for Cushing crude and further resulted in such oil being sold below the posted prices.

Second: In 1922 the Mexia and Powell Fields of Texas resulted in a reduction of the price of Mid-Continental crude from $3.50 a barrel to as low as $1.00 a barrel.

Third: In 1923 the Signal Hills at Santa Springs Fields in California resulted in a reduction from $2.00 to $1.00.

Fourth: In 1927 the Seminole Fields in Oklahoma resulted in a reduction from $1.90 to $1.28 per barrel.

Fifth: In 1931 the East Texas Field caused a drop in the price from 95¢ to a posted price as low as 18¢ per barrel. In the latter part of 1932 and in 1933 the restraints placed upon the East Texas Field were largely relaxed and excess production resulted in a drop in the posted price from 92¢ to 25¢ and many companies withdrew all posted prices and bought in the open market for as low as 5¢ a barrel.

He further stated in each of the cases above outlined the cheap oil from the flush fields absorbed a great portion of the markets of the United States, causing the older fields [fol. 120] to be without a market outlet and forcing them to sell their oil, if at all at less than the cost of production; and that this resulted in abandonment of thousands of "stripper" wells, with the result of permanent loss of a source of supply because many of the abandoned wells became flooded with water to such an extent as to make the wells useless.

He further stated that petroleum is produced in the United States from approximately 330,000 wells in about twenty states and that approximately 300,000 of these wells produce 5 barrels or less, while 250,000 produce an average of 1 barrel per well per day; that there are a number of large fields in the United States the production of which, if unrestrained, would cause a great decrease in the market price of oil; and that among these is the East Texas Field, which could supply at very low cost the entire United States market with the result of absorbing the markets of other fields to a very great extent, compelling the shutting in of stripper wells, the disruption of interstate commerce, great increase in unemployment and the temporary abandonment and shutting down of many refineries and pipe lines.

The defendants introduced in evidence a statement by Ralph T. Zook, who stated that he has been engaged in the oil business for twenty years; that he has been engaged in manufacturing natural gasoline, in owning and leasing tanks cars, and in the production and refining of crude oil; that he is associated with a company known as Sloan & Zook, one of the largest producers of Pennsylvania Grade Crude oil; and that the following statements are based [fol. 121] upon his experience and knowledge of conditions which prevail in the industry. He further stated that when fields are first brought in, they produce for a period of time as "flush" wells, without the necessity of raising the oil by pumping; that in recent years the Oklahoma City pool and the East Texas pool have been of this type so that great difficulty has existed for State authorities to control their production because of competitive drilling; that in August, 1931, the East Texas Field had a reported daily output of over 1,000.000 barrels, while the Oklahoma City pool was producing hundreds of thousands of barrels per day; that when a flush field is allowed to overproduce and monopolize the market, it over-supplies the market and forces all of the other wells, where the unit cost of production is higher, to be shut in or completely abandoned. He further stated that when a well is abandoned or shut down, its oil is at least temporarily removed from the channels of trade and often completely lost because of water intrusion. He further stated that of the 350,000 producing wells in the United States 192,000 are located East of the Mississippi River, with an estimated reserve of 1,500,000,000 barrels; that these Eastern wells employ many thousands of men and supply many refineries; that the major portion of such wells are owned by individuals of moderate means who cannot afford to produce them when the cost of lifting oil exceeds the price of crude oil; that according to Report No. 30 of the United States Tariff Commission, dated March 3, 1931, the production cost per barrel for 1930 for these States east of the Mississippi was as follows:

[fol. 122] United States Tariff Commission Production Cost

Pennsylvania	$2.77
West Virginia	1.83
New York	3.06
Kentucky	1.51
Ohio	1.98
Illinois	1.25
Indiana	1.74
Weighted Average	2.11

He further stated that during the month of July, 1931, when production from East Texas was out of control, the price of oil in Pennsylvania was $1.55, the lowest quoted price for more than ten years; that during the month of May, 193-, when production in the East Texas Field had increased to over 1,000,000 barrels a day, the price of Pennsylvania crude was reduced to the extreme level of $1.22 per barrel; that the prices for crude oil in other Eastern producing areas were correspondingly affected. He further stated that there is a definite relationship between the price of crude produced in the flush areas and the price of crude produced in settled areas; that price changes generally originate in the West and travel East; and that the price relationship which has existed between the quoted price for 36 gravity Mid-Continent and the States of Pennsylvania, West Virginia and Kentucky is as follows:

Western Kentucky

	Average price	Mid-Continent 36° gravity	Diff.
1929	$1.69	$1.37	$ .32
1930	1.49	1.23	.26
1931	.77	.63	.14
1932	1.00	.89	.11
1933 (8 Mos)	.62	.45	.17

[fol. 123] Pennsylvania-Bradford District

	Average price	Oklahoma 36° gravity	Diff.
1928	$3.36	$1.31	$2.05
1929	3.95	1.37	2.58
1930	2.60	1.23	1.37
1931	2.02	.63	1.39
1932	1.88	.88	1.00

West Virginia

	Average price	Oklahoma 36° gravity	Diff.
1925	$3.37	$1.87	$1.50
1926	3.36	2.13	1.23
1927	2.75	1.38	1.37
1928	2.91	1.31	1.60
1929	3.52	1.37	2.15
1930	2.24	1.23	1.01
1931	1.55	.63	.92
1932	1.53	.88	.65
Average	2.65	1.35	1.30

That these schedules show plainly the differential which existed during the period of controlled production, compared to that which existed during the periods of flush field production. He further stated that crude oil from the Gulf Coast points is shipped to the Atlantic Seaboard where it is refined and the products come in competition with the crude produced in New York, Pennsylvania, West Virginia and Kentucky and that Mid-Continent crude is transported by pipe line to Pennsylvania, Ohio and Indiana, where it is refined and the products placed in competition [fol. 124] with the refined products from the crude products in those states. He further stated that the average production per well in the states of New York, Pennsylvania, Kentucky, West Virginia, Illinois, Indiana and Ohio is less than one barrel per well daily; that during the period from 1930 to the middle of 1933, it had not been possible to find a market for all of this production, due to the pressure of oil from other areas; that because of low prices prevailing in the industry, only 6,788 wells were drilled in settled fields in 1931, whereas, there were 11,640 wells completed in 1930, while approximately 22,000 in settled areas were abandoned; that, in his judgment, due to the oil produced in settled areas moving in interstate commerce, a shutting down of these wells interferes with the customary flow of oil in interstate commerce; that numerous refineries depend upon the production from these wells and the refined products from these refineries move in interstate commerce; and that the shutting down of the wells and the refineries and numerous allied industries which supply them would throw out of work many employees.

The defendants introduced in evidence a statement by Joseph G. Stanley, who stated that he is an attorney engaged in the practice of law in Washington, D. C.; that he is one of the counsel for the planning and Co-ordinating Committee provided for under the Oil Code and that the following statements and figures are compiled from data contained in the report of the United States Bureau of Mines for 1932 and 1933. He further states that total domestic production of crude oil in the United States for 1932 amounted to 781,845,000 barrels; that 41,500,000 were pro- [fol. 125] duced in states East of the Mississippi River; that the States of California, Oklahoma and Texas provide over 84 per cent of the total; that in the area East of the Mississippi River there exists 70 per cent of the population of the country, 70 per cent of the automobile registrations and 70 per cent of the gasoline consumption, and that in 1932, 300,000,000 barrels of domestic crude oil, or 38 per cent of the total production, was refined in these states. He further stated that in 1932 the State of Texas produced over 311,000,000 barrels of crude oil and received from other states 23,000,000 barrels; that it delivered 143,000,000 barrels, or 46 per cent of the total production to states East of the Mississippi; that Texas produced 96,000,000 barrels of gasoline, or 22 per cent of the total amount of gasoline refined in the United States; and that it delivered $78,000,000 barrels of gasoline, or 80 per cent of its total gasoline production to other states.

He further stated that the following statements are taken from the report on Pipe Lines, House Report No. 2192, made by the Committee on Interstate and Foreign Commerce to the House of Representatives; that there has been a great waste of natural resources in the United States through competition to "skim the cream"; that the oil industry is particularly vulnerable to such waste; that oil lying under the properties of competing operators is fugitive and leads to a race between owners to take as much oil from their own and adjacent holdings as is possible; that this situation leads to unseemly haste in drilling and operation; that as a result, numerous wastes occur through the escape into the air of oil and natural gas and the production of oil in excess of market demand; that overproduction leads to unnaturally low prices and the waste which always accompanies the utilization of commodities sold at an unnaturally low price; and that unrestricted competition [fol. 126] in the East Texas Field illustrates this waste; that during 1931 Texas showed an increase of production of 36,217,000 barrels, so that production in Texas rose from 48 per cent of the production of all other states in 1930 to 63 per cent in 1931; that this overproduction led to a fall in the price of oil to a low level of 13c a barrel, or lower; and that from the standpoint of conservation this waste is a matter of great concern.

The defendants introduced in evidence a statement by E. J. Sullivan, who stated that he had been engaged in the production and marketing of crude oil for the last 18 years in Wyoming and also in Montana; that he is familiar with the production, refining, transportation and marketing of crude oil in both of these states; that a large portion of the oil produced in said states prior to 1931 had a market in Canada, approximately 30 per cent of the entire production of Montana and approximately 10 per cent of the oil produced in Wyoming being shipped to Canada; that this market has been established over a period of years and it is customary and normal commerce in crude oil; and that during the flush production from East Texas in 1931, East Texas oil was reduced in price to as low as 15¢ a barrel and took from Montana and Wyoming their entire Canadian market for crude. He further stated that when the production of crude oil in East Texas was controlled, Wyoming and Montana gradually regained their Canadian market, but that early in 1933 when East Texas oil dropped to a price of 10¢ to 25¢ a barrel, it again took away the Canadian market from Montana and Wyoming. He further stated that the reason that the oil from these states cannot [fol. 127] compete with the flush production from East Texas is because the crude in Wyoming and Montana is produced from wells of settled production at a lifting cost of approximately 40¢ per barrel. He further stated that at the present time, due to the control of production in East Texas, the Canadian market is more approximately in a normal condition.

The defendants introduced in evidence a statement by Chas. F. Roeser, who stated that he has been engaged in the oil business for 28 years, particularly in the production of oil as an individual producer in Ohio, Oklahoma, Kansas and Texas and that he is thoroughly familiar with the oil busines- in all its branches. He further stated that the production of oil is seldom responsive to market conditions existing at the time of production, due to the fugitive nature of oil and the fact that each owner of property over a common oil pool must drill and produce at the same rate as its competitors in order to obtain his share of the oil; that this condition has led to competitive production in every oil field where conservation laws have not existed or have not been enforced; and that production in excess of market demand leads to ruinous price reductions, demoralizing the industry as a whole and restricting the normal flow of oil and its products in interstate commerce.

He further stated that the development of the East Texas oil field illustrates this condition; that its disorderly development led to a decline in the price of oil from $1.00 a barrel in January, 1931, to 13¢ in August, 1931; that this reduction in price affected the whole country so that Oklahoma oil declined from $1.25 to as low as 25¢ a barrel; that the ruinous reduction in price compelled the shutting in or [fol. 128] abandonment of many wells of small production, the closing down of refineries and a widespread interference with and obstruction of the normal flow of oil. He further stated that the effect of overproduction in East Texas is illustrated by the result on the fields of North Texas and West Central Texas; that the fields of North Texas include 15,000 producing wells of settled production; that these wells produced during the period from 1920 to 1930 an average of about 90,000 barrels per day or about six barrels per well per day; that the cost of lifting the oil to the surface was approximately 40¢ per barrel; that the East Texas production caused the price of oil in North Texas to drop to 22¢ a barrel or lower; that as a result of the low price prevailing during the greater part of the period from 1931 to July, 1933, 1,000 wells were abandoned and the production therefrom, which amounted to 7,000 or 8,000 barrels per day, was entirely lost; that the reserve production from these wells would amount to 4,000,000 barrels of crude oil, which has thus been lost forever; that a large percentage of the production from the North Texas area is transported out of the State of Texas to refineries in other States and that the abandonment of wells there therefore directly affected and prejudiced the normal flow of oil in interstate commerce.

He further stated that refineries located in Wichita County, Texas, refined during the period from 1920 to 1930 an average of 38,000 barrels per day; that during the period of large production from East Texas, the runs of crude oil on these refineries dropped more than one-half, or to an average of approximately 19,000 barrels per day; that 3 refineries in Wichita County were shut down entirely; that the production from these refineries regularly moved to consuming centers outside of the State of Texas and that the loss of output from these refineries necessarily [fol. 129] reduced the amount of refined products moving out of the area into interstate commerce. He further stated that he is the owner of one-half interest in 321 wells in North Texas and West Central Texas; that these wells were shut down at the time of the flush production from East Texas; and that the product of these wells, which generally moved to points outside of the State, (was taken from the channels of interstate commerce. He further stated that if any one of a number of large fields in the United States were allowed to produce without restraint, it would absorb the market of the fields of settled production and "stripper" wells, of which there are approximately 300,000 in the United States, producing more than 50 per cent of the total supply that such shut-down would not only disrupt the normal flow of interstate commerce, but would in some cases cause the loss of great reserves of crude oil and that the closing down of such wells would throw out of employment thousands of employees, without materially giving further employment in the fields of flush production, and that the employees of many refineries which use oil produced from "stripper" wells would be thrown out of employment.

The defendants introduced in evidence a statement by E. B. **Reeser**, who stated that he is the President of the Barnsdall Refineries, Inc.; that he has been an officer or employee of such corporation for at least ten years; that he has become thoroughly familiar with the business of the corporation; that said corporation is the owner of refineries in Oklahoma and Kansas, where it is engaged in the business of refining crude oil; that the average number of [fol. 130] barrels of oil refined by said corporation per year is about 4,000,000 and the average number of gallons of gasoline produced is 80,000,000; that one of the important elements in the cost to the refiner manufacturing gasoline is the cost of crude oil; that during the last few years regulation of production of oil has been authorized in the State of Texas and the Texas Railroad Commission has issued orders limiting the amount of oil to be produced; that there have been frequent violations of the orders of the Railroad Commission; that oil produced over the amount allowed by said Commission is known as "hot" oil; that "hot" oil is generally purchased, not by legitimate refiners, but by refiners who know that the same has been produced in violation of law and who purchase it at a lower price than the established price for crude oil; that at various periods during the last three years a large amount of "hot" oil has been produced in the East Texas field; that such "hot" oil has generally been produced secretly and secretly delivered to refiners in the same general locality; that "hot" oil has usually sold at 40¢ a barrel or less, while the posted price of legally produced oil has been $1.00 per barrel; that refiners producing gasoline from "hot" oil sell their products to wholesalers at a lower price than those using legitimate oil; that wholesalers sell such products at a less price to retailers in the various states and that the retailers sell such products to the public at a less price than their competitors dealing in gasoline products from legitimate oil; that their competitors are thereupon compelled to cut prices in order to retain their business; that waves of price cutting frequently extending over entire states and sometimes across state boundaries have resulted and that the price of crude oil and its products throughout the country has, accordingly, been affected by the production of "hot" oil and the sale of its products.

[fol. 131] He further stated that the refinery of which he is the President, has been injuriously affected during the past years by the sale of cheap gasoline produced from "hot" oil and in its St. Louis market has been forced to sell its products at a price below the cost of production in order to retain its customers.

The defendants introduced in evidence the statement of R. H. Montgomery, who stated that he is a Professor of Economics in the University of Texas; that he has made a field study for many years of Government regulation of industry with particular reference to railroads and public utilities and that he has acquired a rather detailed knowledge of the conflicts arising between Federal and State governments in regulation of industries which in their essential operations cut across state lines.

He further states facts concerning the size and importance of the petroleum industry, the geographical distribution of production and consumption in the United States, the interstate movement of oil, and the products thereof, produced in Texas, the interrelated nature of the industry, the necessity of national control, the waste that has resulted from overproduction and its effect upon the nonintegrated companies the impossibility of the individual states curing the existing evils and the probable beneficial effects of the Petroleum Code, which facts substantially agree with those set forth in the statement of W. B. Hamilton set forth above.

The defendants introduced in evidence a statement by H. C. Wiess, who stated that he is Vice President of the [fol. 132] Humble Oil & Refining Company; that he has been actively engaged in the oil business for approximately 22 years; that he has been a member of the Board of Directors of the Humble Oil & Refining Company for more than sixteen years and a Vice President for more than fourteen years in direct charge of refining and marketing operations; that Humble Oil & Refining Company is an integrated company, engaged itself or through its subsidiary, Humble Pipe Line Company, in producing, transporting, refining and marketing; that said corporation produces oil in New Mexico, Louisiana and in almost all of the producing areas in Texas; that it purchases oil in various producing areas in Texas; that the Humble Pipe Line Company transports oil from all of the principal producing areas of Texas and New Mexico, moving approximately 276,000 barrels per day, of which 197,000 barrels move in interstate or foreign commerce; that Humble Oil & Refining Company has a capacity of approximately 122,000 barrels per day, at least

95 per cent of the products from which are marketed in other states or in foreign countries and less than 5 per cent of which are marketed in Texas; that he is familiar with the various oil fields in Texas and the methods of production, transportation, refining and marketing of the petroleum thereof; that he has made a careful study of the movement of oil and its products to the markets in the United States and abroad; that his corporation has maintained a statistical force for the accumulation and analysis of facts involving the production, transportation, refining and marketing of oil, a large part of which has been done under his supervision and the results of which have been at all times available to him and in constant use by him; that he has made a careful study of not only such data but of statistical data and reports issued by the United States Bureau of Mines, the American Petroleum Institute [fol. 133] and other local, state and national trade associations; and that he is Chairman of the Refining Sub-Committee of the Planning and Coordination Committee for Region 4, including the states of Kansas, Oklahoma, Texas, and New Mexico, and in such capacity is in close touch with refining conditions and practices in such region and the relation between such conditions and the practices of producing and transporting.

He further stated facts concerning the size and importance of the petroleum industry, the position of the integrated companies in the industry, the geographical distribution of production and consumption of petroleum in the United States, the interstate movement of petroleum produced in Texas, the intermingled nature of interstate and intrastate commerce in petroleum; the effect of overproduction upon the natural market, the effect upon production of the fact that petroleum is produced from common reservoirs, the demoralizing effect of the marketing of "hot" oil, and the need for a determination of consumer demand by a national body, which facts substantially agree with those set forth in the statement of W. B. Hamilton set forth above.

The defendants introduced in evidence the statement of **Ralph H. Kinsloe**, who stated that he is Vice President and General Manager of Magnolia Petroleum Company and its subsidiary, Magnolia Pipe Line Company, and has general supervision of the production and sale of its crude oil and the products thereof; that he has been actively engaged in the oil business for 20 years; that he has actual knowledge of the production, refining, transportation and [fol. 134] marketing of crude oil in all of the states in which the Magnolia Petroleum Company and its subsidiary operate; that he has observed and studied petroleum business from a national viewpoint; that he knows the effect from a national standpoint of overproduction and underproduction of crude oil upon the national price structure; that the Magnolia Petroleum Company and its predecessor, a joint stock association, have been actively engaged in the production, refining and sale of crude oil and its products at wholesale and retail in interstate and intrastate commerce since 1911; that said Company is a purchaser of crude oil from other producers in Oklahoma, Louisiana, Arkansas and Texas; that said Company owns and operates 5 refineries in the State of Texas; that said Company does not own or operate refineries in other states; that its subsidiary, the Magnolia Pipe Line Company, is a common carrier of crude oil, operating its system of pipe lines in Louisiana, Oklahoma, Arkansas and Texas; that the main trunk line from all states of said Company terminates at Beaumont and Magpetco in Jefferson County, Texas, on the seaboard and that said Pipe Line Company does not purchase or sell oil.

He further stated that oil is produced from two classes of wells, known as flowing wells and pumping wells; that the Magnolia Petroleum Company owns and operates 6,057 wells situated in 5 states, of which number 5,521 are pumping wells and 536 are flowing wells; that of the flowing wells 516 are located in Texas and 467 in the East Texas field; that, of the total wells operated, 83.7 percent are pumpers and that exclusive of the East Texas flowing wells, 98.2 per cent are pumpers and that the percentage of pumping wells operated by said Company in Oklahoma, Kansas, Arkansas and Louisiana is 99.3.

He further stated that on January 1, 1933, Government [fol. 135] statistics show that there were 321,500 oil wells in the United States, of which approximately 11,000 were flowing wells in the East Texas field and 600 were pumping wells in said field; that it is estimated that there are 15,-

000 flowing wells in the United States representing 4.7 per cent of the total number of producing wells; that the average production of the pumping wells is from one to five barrels of oil per day; that unless the said pumping wells are continually operated, they are ruined; that flush fields and flowing wells are comparatively short lived and as the gas and other natural pressure diminishes, the wells cease to flow and the recovery of oil therefrom is by the pumping process; that the nation is dependent upon pumping wells to secure steady and dependable production; that the national requirement of crude oil is from 2,000,000 to 2,300,000 barrels per day; that it is estimated, and he believes correctly, that under normal conditions 75% of the nation's requirement of crude oil is secured from pumping wells; that the potential production from the 11,000 flowing wells in East Texas is in the neighborhood of 5 million barrels per day, far in excess of the national requirement; that if these wells were permitted to produce one-half of their potentials, they would produce 2,500,000 barrels, which is in excess of the nation's requirement; that the Magnolia Petroleum Company, through pumping wells in Oklahoma and Louisiana, secures the greater percentage of the oil that it produces and purchases in those states; that only a small percentage of the oil purchased and produced by it in said states is from flowing wells; that in the States of Kansas and Arkansas, it produces a large number of barrels of oil per day, solely from pumping wells; that practically all of the oil produced and purchased by the Magnolia Petroleum Company in said four states is shipped and sold in interstate commerce; that [fol. 136] 22% of the oil produced and purchased by said Company in Texas is sold and shipped in interstate commerce; that thousands of barrels of oil produced in states other than Texas are transmitted in interstate commerce through its subsidiary pipe line to Beaumont and Magpetco and there shipped to the Eastern Seaboard by boat; that said oil is produced and purchased for the purpose of said interstate shipments; that the majority of the oil so shipped is produced from pumping wells; that a small percentage of the crude oil purchased and produced in states other than Texas is refined in Texas; that 78% of the oil produced and purchased in Texas is refined in Texas; that during the process of refining said oil, it becomes mixed

and intermingled and it is impossible to determine from what crude oils the manufactured products are derived; that 81% of the manufactured products is sold in interstate commerce to purchasers on the Eastern Seaboard of the United States and in other states of the Union, and that said products are manufactured for the purpose of being sold in interstate commerce.

He further stated that the market value of crude oil is determined from a national viewpoint, but its determination is to a great extent controlled by local conditions; that where there is an excess of petroleum over national requirement, its market value decreases as was demonstrated when the oil field in East Texas was permitted to produce without restriction, resulting in the lowering of the price of crude oil to from 25¢ to 10¢ a barrel in Texas, and a great reduction in the price of crude oil in all of the other oil producing states; that when the price of crude oil is reduced to the point where it is unprofitable to operate pumping wells, said pumping wells will be shut in; that the shutting in of said wells results in said wells being destroyed by the "sanding up" of the same and the sands [fol. 137] becoming impregnated with salt water; that a further result is that laborers and employees upon said wells are without employment and the owners of said wells lose their investments, and that it further results in taking out of interstate commerce the oil which has been usually produced from said wells.

He further stated that until the Federal Government undertook to control the petroleum industry from a national viewpoint, the production of oil far exceeded the national demand; that even now, owing to evasion of the law, production is in excess of national demand; that the states in general are incapable of controlling the production of oil; that in East Texas on account of the numerous flowing wells there is great overproduction; that excess oil is being sold far below the market value of the same to refiners who have built temporary refineries in the East Texas field; that it is common knowledge that this "hot" oil is produced in such quantities in East Texas and is sold below the market and true value of the same to such an extent that, unless prohibited, it will depress and destroy the national market for crude oil.

He further stated that one class of refiners undertakes to observe and comply with the Rules and Regulations of the Government bodies, while another flagrantly violates these rules; that this second class sells the gasoline so manufactured at a much lower cost than the legitimate refiner; that said refiners evade taxes imposed by the State of Texas and sell gasoline to irresponsible persons who operate truck equipment by which they peddle said bootleg gasoline at retail and wholesale; that these peddlers haul such gasoline both in the state where it is manufactured and into adjoining states and often sell this gasoline to retailers who are handling the products of legitimate refiners [fol. 138] and who mix and mingle said products with the legitimate gasoline and sell this mixed gasoline under the trade name and mark of legitimate refiners; that this practice is responsible for a large illicit industry in Texas resulting in the manufacture of millions of gallons of poorly refined gasoline which has affected the marketing of gasoline in interstate commerce; that the result is that the legitimate price structure and market value of gasoline and crude oil has been affected in that the legitimate refinery, wholesaler and retailer is driven to the necessity of meeting the price fixed by the illegitimate seller and marketer, even though this necessitates selling below cost; that, if this continues, it will result in the depression of the entire market structure and will further result in the rapid depletion of the nation's oil reserves and a waste of petroleum and its manufactured products; and that these sources of "hot" oil can be checked by a series of reports, under oath, by producers and refiners and such is a certain useful, practicable and reasonable method of locating the origin of "hot" oil and its products which move in interstate commerce.

He further stated that he is familiar with the various provisions of the National Industrial Recovery Act and the Petroleum Code and the Rules and Regulations adopted by the Administration under said Act; that he believes the enforcement of said Act and the Rules and Regulations will go a long was in eliminating the illegal and harmful practices being carried on and will conserve the resources of the nation and permit the free flow of petroleum in interstate commerce; that unless production of oil is controlled, the free flow of petroleum in interstate commerce will be prevented, unemployment will result and employees in the production and sale of petroleum will be reduced and [fol. 139] their wages diminished; and that this is demonstrated by the actual results which have occurred during the last 2 or 3 years from the production of "hot" oil.

The defendants introduced in evidence a statement by Carl Weiner, who stated that he is and has been a producer of crude oil in the Chanute field for 20 years; that he is President of the Kansas Stripper Oil Well Association, the membership of which is composed of operators of oil wells in the oldest fields of the eastern counties of Kansas; that in the eastern counties of Kansas there are approximately 11,000 oil wells having a daily production of about 6,000 barrels; that many of these wells are more than 30 years old; that these wells have frequently been restricted because of uncontrolled overproduction of oil in other areas, particularly since the opening of the East Texas area and the Oklahoma City pool; and that since production has been controlled through the Oil Code, these wells have been continuously operated, except for 12 days during the month of October, 1933.

He further stated that in May, 1933, the market price of 36 gravity oil was 25¢ per barrel, and that, as a result, many of the wells in Eastern Kansas were abandoned or shut down; that to his knowledge, the number of wells so abandoned was 476; that there are probably as many more of which he has no positive knowledge; that the production from such wells averaged 600 barrels per day; that this production during the period of their operation was largely transported in interstate commerce; that since the Oil Code has been in effect, the price level has reached $1.00 per barrel; that this increased price has made it possible [fol. 140] for the employees on the wells to be paid good wages; that many men have been employed in reconditioning the wells and the lease equipment; that the general business conditions have greatly improved in the locality where the wells are located and that when the price of oil was reduced to the low levels above mentioned, many men employed on the pumping wells were thrown out of work and those who were retained were paid very low wages.

The defendants introduced in evidence a statement by E. B. Reeser, who stated that he has been engaged in various branches of the Oil Industry for 32 years; that for 15 years he has been an official of the Barnsdall Petroleum Company, a corporation engaged in the business of producing, refining, transporting and marketing petroleum, and its products, and that he is particularly familiar with the production and marketing of crude oil and the refining and marketing of the refined products thereof.

He further stated that for the last 32 years, from time to time, new oil fields of large production have been discovered and until the last few years the production from such fields has been practically unrestrained, that the invariable result of bringing in fields of large flush production has been that in a short time thereafter the price of crude oil has been materially reduced with an unfavorable reaction upon the market and sale not only of the crude oil, but also of the refined products thereof; that specific examples are the Spindle Top Field in Southeastern Texas in 1902, the Glen Pool Field in Oklahoma in 1906, the Lakeview Gusher Field in California in 1910, the Cushing and Healdton [fol. 141] Field in Oklahoma in 1913-14, the Mexia and Powell Field of Texas in 1922, the Seminole Field in Oklahoma in 1927, and the East Texas Field in Texas in 1930; that in many instances the reduction in price amounted to 80 and 90% of the sale price of crude petroleum; that in many instances the excess production has caused the shutting down of thousands of wells of small and less profitable production which has resulted in the permanent abandonment of these wells and the consequent loss of known reserves of petroleum in the United States; that the Eastern Seaboard market for the oil produced in California was absorbed by the production of the East Texas Field because of the low production cost and the great supply from the East Texas Field; that the result of the loss of this market caused the closing down of many of the smaller wells in the California field, increasing unemployment in said field; and that it is well known that in a great many instances the closing down of wells of small production for any length of time permits water to encroach upon the oil producing formation and thus destroys the producing area in such fields.

He further stated that there are a number of fields in the United States, the unrestrained production of which would cause a reduction in the market price of oil to a few cents a barrel; that the East Texas field alone could supply the entire requirement of oil for the entire United States and absorb the entire market for oil now produced in the stripper oil area of Pennsylvania, Ohio, Illinois, West Virginia, Kentucky and even of the pumping areas of Oklahoma, Texas and Kansas; that such an absorption of the market would not only result in disruption of the normal flow of interstate commerce, but would result in a great increase in unemployment since the East Texas field can produce the amount of oil necessary to supply the entire [fol. 142] United States with very little increase in its number of employees; and that many refineries scattered throughout the United States which work almost exclusively upon oil produced from stripper well fields would cease to operate and throw out of employment their employees.

The defendants introduced in evidence a statement by W. W. Warner, who stated that he is the President of the Oklahoma Stripper Well Association, the membership of which is made up of Stripper Well Associations for the several districts embracing the entire oil producing area of Oklahoma; that approximately 90% of all producing wells in Oklahoma produce less than 10 barrels per day and are stripper wells; that it is estimated that there are approximately 50,000 of such wells and that the total aggregate production from them amounts to 140,000 barrels per day; that these wells are largely owned by men of small means who dispose of their oil to integrated companies; that the average cost of producing oil in stripper wells throughout Oklahoma varies from 75¢ to $1.00 per barrel; that the cost of producing oil from flush pools like the Oklahoma City pool or the East Texas field is much less; that the unrestrained production of the Oklahoma City pool and East Texas field has in the past resulted in overproduction with the result that the price of oil in Oklahoma for a considerable period of time reached a low level of 18¢ per barrel; that this price was below the actual cost of production in Oklahoma; that it is estimated that 5,000 stripper wells were compelled to shut down or were completely abandoned with a loss in production of approximately 4,000 barrels per day; that the production thus lost ordinarily had been transported in interstate commerce to [fol. 143] refineries outside of the State and the refined products transported to consuming centers throughout the country; that many of the stripper wells were closed and were completely lost, as the oil lying beneath them can probably never be recovered; that many employees were thrown out of work through the closing of these wells and the wages of those retained were drastically reduced; and that since production has been placed under control by the National Recovery Act and the Oil Code, the price has increased to a present level of $1.00 per barrel and new employees have been put back on the pay roll at good wages.

He further stated that it is impossible for stripper wells to compete with flush production wells because of the disparity in the cost of production; that if flush production wells are allowed to flow unrestrained, they will virtually monopolize the market so that all of the stripper wells will eventually be shut down or abandoned; and that, in his opinion, stripper wells supply somewhat over 25% of the total domestic production.

The defendants introduced in evidence a statement by J. Wood Glass, who stated that he is President of the Northeastern Oklahoma Stripper Wells Association, which Association includes in its membership oil operators owning and operating stripper wells in Washington, Nowata, Rogers, Osage and North Tulsa Counties, Oklahoma; that there are approximately 20,000 oil producing wells within this area which produce approximately ¾ths of a barrel of oil per day; that the average cost of lifting the oil in these wells is $.84 per barrel; that these stripper wells cannot compete with flush production wells if the latter are permitted to flow unrestrained; that [fol. 144] the unrestrained flow from the East Texas field and the Oklahoma City pool reduced the price of oil in the Oklahoma area to $.25 per barrel in 1933, causing the shutting in or abandonment of approximately 2,000 stripper wells in Northeastern Oklahoma; that the oil from these wells was taken out of the interstate channels of trade into which it customarily flowed; that the shut-down of these wells threw out of employment many workers and caused drastic reduction in wages; and that since the adoption of the National Recovery Act and the Oil Code the price of oil in Northeastern Oklahoma has increased to $.94 per barrel with the result that stripper wells are able to produce at some profit and many men have been returned to employment and wages have been substantially increased.

The defendants introduced in evidence a statement by J. R. Pemberton, who stated that he is a graduate of Leland Stanford University with an A. B. degree; that he majored in geology with particular reference to petroleum matters; that during the year 1909 he was employed as a field geologist by the United States Geological Survey; that in 1910 he instructed at Stanford University; that in 1911-15 he examined the oil and gas resources in the Argentine as a geologist in the employ of the Republic of Argentine; that during 1916-1917 he was employed in the Petroleum Industry in California; that from 1918 to 1923 he was engaged in geological exploration, leasing land, developing wells, producing oil and gas and marketing oil, gas and gasoline in Oklahoma, Texas, Kansas, New Mexico, Louisiana, Arkansas and Kentucky; that during 1924 to 1931, he was engaged in California in the production and marketing [fol. 145] of petroleum; that since 1932 he has been Oil Umpire for California and since September 8, 1933, he has been Oil Umpire for the Federal agency designated by the Petroleum Administrator for the allocation of production of oil in California.

He further stated that within 10 days, the State of California can produce in excess of one million barrels of crude oil daily and maintain such production for at least 10 years; that the potential capacity of the known fields in California is sufficient to produce an amount sufficient to supply the entire demand in the United States for many years to come; that the potential capacity of California to produce petroleum from undiscovered pools is unknown, but of great extent; that the Kettleman Hills Field alone is estimated to contain 2 billion barrels of recoverable petroleum; that the Los Angeles Basin and coastal fields could likewise supply a very large proportion of the consumptive demand of the United States; and that he has received many complaints from producers in California that the December allowable of 450,000 barrels is extremely low when compared with the potential capacity of the California fields.

The defendants introduced in evidence a statement of **Avary H. Alcorn**, who stated that he is an employee of the Department of the Interior, Division of Investigations; that he has gathered data on the production of petroleum in the East Texas field during the month of October, 1933; that the data was obtained from the various pipe lines, gathering systems, refineries, reclamation and gasoline plants located and operating in the East Texas Oil Field; that all information not obtained from the above mentioned [fol. 146] companies operating in the East Texas Field was obtained from the Railroad Commission of Texas and from monthly and daily reports of the above described companies, received in the Department of the Interior office at Tyler; that the amount of overproduction shown by this data is 591,576 barrels, which amount was arrived at after checking every available and possible report that had to do with the producing, refining and transporting of crude oil in and from the East Texas field. He further stated that after twelve years' experience in the oil business he was positive that the above mentioned overproduction of 591,577 barrels of crude oil could not have been, or would not be consumed within the bounds of the State of Texas and that it would have to enter the stream of interstate commerce and be marketed over a large trade area.

The defendants introduced in evidence a statement of **Walter S. Behrens**, who stated that acting in the scope of his official duties as an Oil Enforcement Agent of the Department of the Interior, Division of Investigations, he has assembled data showing the movement of tank cars of gasoline from the East Texas Oil Field to various points in the United States and also gasoline consigned interstate to the Gulf Coast where such shipments were loaded on tankers entering coastwise and foreign commerce; that from his knowledge of the industry he knows that oil produced in violation of State law is sold at distress prices and has time and time again demoralized the national market for petroleum and its products; that this demoralization has deprived legitimate oil producers, land owners and markets both within the State of Texas and elsewhere of their fair share of the national market, because of the [fol. 147] competitive advantages the violators enjoy and has deprived legitimate operators of fair prices for their crude oil: that he bases the foregoing statements on the fact that in March, 1933, there was received at Texas City Terminal, Texas City, 4301 cars; in April, 2796 cars; in May, 2796 cars; in June, 678 cars, and from July 1st to July 20th, 1754 cars, each car containing approximately 220 barrels of oil; and that the refined products of this petroleum entered interstate and foreign commerce, affecting the gasoline market not only of Texas, but of the nation.

He further stated that the East Texas Oil & Refining Company shipped from the East Texas Field from June 8th to September 28th, 1933, 342,773.87 barrels of gasoline to Harbur Terminal Company at Texas City for interstate coastwise shipment, of which 197,144.76 barrels had been so shipped on September 28th; and that this refinery and others in the East Texas Oil Field have billed an enormous amount of gasoline to East St. Louis and other points in Illinois, to the States of Arkansas, Tennessee and Kentucky, and to other wide areas, thus affecting the national price structure.

The defendants introduced in evidence a statement by Jos. L. Quinn, who stated that in the course of his employment as Oil Enforcement Agent by the Department of the Interior, he checked the records in the office of the Railroad Commission of Texas at Kilgore, Texas, and found that the total shipments during the month of November amounted to 6,906 tank car loads; that of this amount 3,303 cars moved for export or coastwise, 2233 cars moved interstate and 1370 cars moved intrastate; that the percentage of [fol. 148] cars moving intrastate on the total car movements was 19.8% and that this proves that 80.2% of the tank car shipments of products refined in the East Texas Field by East Texas refiners moves interstate.

The defendants introduced in evidence a statement of Marvin E. Croom, who stated that he is the East Texas

Manager for the Texas Petroleum Council, an impartial, non-political and non-factional association of companies and individuals engaged in the oil business, which has for its principal purpose the assembling, co-ordinating and disseminating of information appertaining to the conduct of such oil business, with particular reference to the enforcement of the Regulations, Rules and Statutes of Proration, whether State, Federal or individual; that under his direction the records of the various oil regulatory departments of the State have been carefully checked in order to ascertain the true facts with reference to the movements of crude oil and its products in intrastate markets as compared with interstate and foreign markets; that for the month of October, 1933, the total consumption of crude oil and the products thereof within Texas was represented by 78,207,575 gallons of motor fuel, as shown by sworn statements of refiners and distributors filed with the Comptroller of Public Accounts; that from these said sworn statements it appears that the total crude oil runs to stills in October, 1933, amounted to 17,862,236 barrels, while the motor fuel manufactured from this oil amounted to 339,232,853 gallons, an average yield of 45.2% per barrel; that the tank cars and other shipments of motor fuel out of the State of Texas for the month of October, 1933. amounted to 295,372,270 gallons, which is 79.065% of the total used in intrastate and inter-[fol. 149] state markets; that the crude oil shipped out of the State of Texas in the month of October amounted to 6,656,445 barrels, as shown by sworn statements rendered to the Comptroller of Public Accounts; that the intrastate consumption of crude oil and the products thereof amounted to only 4,121,648 barrels in October, 1933, as compared to interstate shipments of 22,215,456 barrels for the same month, or 15.65% intrastate and 84.35% interstate; that the gasoline stocks held by those refineries and distributors reporting to the Comptroller amounted to 294,064,593 gallons at the end of October, 1933, which is practically equal to the total intrastate and interstate market demand for one month of the Winter period; that the crude oil stocks held in Texas at the end of October, 1933, total some 126,872,000 barrels, which is equivalent to the entire State's production for 4.6 months under the current State allowable of 888,000 barrels per day; and that such stocks of crude oil and motor fuel may at any time move into interstate and export market- to constitute a decided menace to such markets, unless the movement of the same and the origin of said movement be supervised and controlled.

He further stated that at the present time the exact movements of crude oil and its products within the State of Texas are not adequately controlled by State agencies; that the Railroad Commission has supervision over the production of crude oil and pipe line movements, while the Comptroller of Public Accounts has supervision over all phases of intrastate business for tax purposes only and that there is no "tie-in" between the two departments; that there are some sixteen gathering systems which do not report to the Railroad Commission and that these sixteen gathering systems did not report to the Comptroller for the month of October, 1933, so that there are not any State records showing accurate amounts of crude oil transported [fol. 150] by these lines; that the State authorities do not have the legal right to restrain the movements of certain kinds of oil produced or assembled in excess of the current allowable, such as pick-up pits, salvage plants and all classes of storage; that there are eleven refineries located within or adjacent to the East Texas Field which have not been reporting to any regulatory body having jurisdiction and control over oil sources; that according to the estimated runs on stills by agents of the Railroad Commission, these eleven refineries ran for the week ending November 18, 1933, 29.4% of all the runs on stills by refineries located in the East Texas Field, while for the month of September, the same eleven plants ran only 13.5%, showing the increasing market influence of such uncontrolled operations; that for the month of September, 1933, reports to the Comptroller covering taxes were available for only 5 of these 11 plants, but that from their own sworn statements, these five refineries delivered into interstate and export markets more than 54% of their total reported sales for September; that the present laws of the State of Texas are such that a refiner or distributor doing purely an interstate business does not have to have a permit from State authorities and does not have to render reports except special audits, which cannot be conducted extensively and frequently enough to provide adequate checks; that illegal gasoline on which taxes have not been paid, or which is manufactured from "hot" oil, has in the past constituted a menace to and burden on interstate markets; that any uncontrolled oil operations within Texas still constitute a menace to the interstate markets of crude petroleum and its products, because of the tremendous potential production held within the State; that the effect of motor fuel refineries in Texas upon interstate markets may be illustrated by the following list of interstate destinations of gasoline shipments from Oil Refineries, Inc., [fol. 151] located at Overton, Texas, for the month of August, 1933, South Carolina, Ohio, Michigan, Wisconsin, Mississippi, Arkansas, Illinois, Indiana, Nebraska, Iowa, Georgia and Kentucky.

He further stated that current authorized crude petroleum production from the East Texas Field has been cut from an average of 59 barrels as of September 7, 1933 to less than 35 barrels as of December 10, 1933; that unless crude movements are adequately controlled within the State. "hot" oil may become so important a factor in the markets that production will suffer to the extent that general current operations cannot be conducted at a profit; that because of the very nature of petroleum and its products, "hot" oil and its products become intermingled with the allowable production and the identity of the same is not and cannot be distinguished when it crosses the State line; and that the foregoing facts and statements are based upon careful and detailed studies of existing conditions and are substantiated by certificates confirming the important facts contained herein.

The defendants then introduced in evidence a statement by R. B. McLaughlin, who stated that he is Secretary and Assistant Treasurer of the Texas Pipe Line Company and an officer of the Texas Pipe Line Company of Oklahoma; that he has been in the employ of said companies for twenty-seven years; that his duties have been practically exclusively confined to pipe line operation during that time; and that it has been necessary to make an extensive study of pipe line operations not only of the companies by which he has been employed, but also by other major com- [fol. 152] panies operating in what is termed the Mid-Continent and Gulf Coast areas.

He further stated that pipe lines constitute a unique specialized transportation system developed by the petroleum industry in many respects similar to railroad systems with trunk line stations, terminals, storage yards, switch systems, dispatchers, and telephone and telegraph systems; that interstate pipe lines operate as common carriers and are subject to the Interstate Commerce Act; and that in various states trunk lines are common carriers and subject to the jurisdiction of State Commissions. He further stated that the Texas pipe Line Company operates today in New Mexico, Texas, Louisiana and Arkansas, with a network of 5,121 miles and performs both interstate and intrastate service; that the Texas pipe Line Company of Oklahoma, while its system is confined within the State of Oklahoma, accepts oil for transportation under joint tariff with the Texas Pipe Line Company for delivery to Houston and Port Arthur, Texas, and also accepts crude for delivery to the Texas-Empire Pipe Line Company, which is an exclusive interstate transportation system.

He further stated that on the basis of a report published by the Interstate Commerce Commission, No. 3397, issue of July, 1933, there were on December 31, 1932, 92,783 miles of pipe line in operation, representing an investment of $763,941,699.00, which transported 1,095,912,816 barrels of oil; that on the basis of reports rendered by Walter M. W. Splawn to the Interstate Commerce Commission (House Report No. 2192—Jan. 19, 1932), approximately 53% of the oil transported in 1931 moved in interstate commerce; that the above report of the Interstate Commerce Commission does not include reports from pipe line carriers operating in California and investigation will develop that [fol. 153] considerable quantity of oil transported by the California pipe line carriers was for interstate commerce in that the oil was delivered to boats at the Pacific Coast for delivery to the Atlantic coast; that, according to the Splawn report, of the 73 major pipe line companies, 21 are engaged exclusively in interstate commerce; that to his knowledge the operations of those engaged in both interstate and intrastate transportations in the Mid-Continent and Gulf areas is so intermingled that it is impossible to separate the operations because in many operations the same pipe lines and pumping equipment are used for transporting oil moving in interstate and intrastate commerce; and that frequently oil originating in a given pool and moving to a given destination through the same pipe line system will be moving in both interstate and intrastate commerce, since part will be delivered locally at the destination and part will be delivered into boats moving in interstate and foreign commerce.

The defendants introduced in evidence a statement by E. H. Eddleman, who stated that from 1922 to 1926 he was Vice President of the Texhoma Oil & Refining Company; that from 1926 to 1928 he was Vice President of the Continental Oil Company, both of which companies were engaged in the production, refining, transportation and marketing of crude oil and its products; that from 1928 until December, 1931, he was Receiver or Manager of American Refining Company, a corporation engaged in the same branches of the industry; that from January, 1932, until October, 1933, he was Executive Vice President of the Texas Oil and Gas Conservation Association, an association engaged in securing data and statistics concerning all [fol. 154] branches of the oil industry; and that he is familiar with the production, refining and marketing of petroleum and its products throughout the greater part of the United States.

He further stated that approximately 50% of all crude oil produced in the United States is produced by integrated companies whose activities encompass the whole industry; that the typical and usual course of business in the oil industry from the place of production to final distribution is as follows: If the oil is produced by an integrated company, it is transported by the company's pipe lines to its own refineries, sometimes located in another state, then placed in temporary storage until refined in the company's own refinery and moved to the distributing stations of the company, where it is sold either to wholesalers or to the final consumers; that from the moment the oil reaches the surface of the well until it reaches the company's bulk plants or places of ultimate consumption, it is in a continuous current of interstate commerce; that on the average about 80% of all oil produced finds its ultimate market in other states than that in which it is produced; that in the case of production by an integrated company, the title to the oil does not change from the time it leaves the ground until sold to the jobber, distributor, retailer, or consumer; that oil in trunk pipe lines is commingled with other oil so that there is as a rule no identity of shipment; in the case of production of oil by individuals or non-integrated companies, the oil is usually produced under a contract of sale to some integrated company prior to the time of production; the non-integrated company usually has no storage or pipe line facilities; the oil after purchase by the integrated company is treated in the same way as oil produced by them; in some cases the oil is neither produced by or sold [fol. 155] to an integrated company but sold to a refinery located near the source of production; such refinery, however, sells only a part of its refined products within the state where produced and refined, and the balance finds its way into interstate commerce; that thus the typical and customary course of the oil business is for the great bulk of all oil and the products thereof to move in a continuous stream of interstate commerce, whether produced by integrated or non-integrated companies or individuals.

He further stated that about 95% of the country's crude oil is produced west of the Mississippi River, the states of Texas, California, and Oklahoma producing over 84% of the country's demand; that the oil is moved to the large consuming areas by pipe lines, and also tank steamers from the Gulf points, that there are several pipe lines which extend in an arc across the country from Texas northeasterly through Oklahoma, Kansas, Missouri, Illinois and Indiana, and then due east through Indiana, Ohio, Pennsylvania and New Jersey; that there are also lines from fields in Wyoming which connect with the main trunk line system in Missouri; that Texas and Oklahoma have a network of lines, large and small, fitting into the main trunk lines to the north and others leading down to tidewater on the Gulf Coast; that lines similarly connect Louisiana and Arkansas with the main trunk line system; and that California has its own system linking its fields with the refineries at tidewater.

He further stated that he is familiar with the East Texas Oil Field and with the marketing, transportation, and refining of the oil produced from said field, and the distribution of the refined products thereof; that there are thirteen pipe lines engaged in transporting crude petroleum from the field to various parts of the United States, and that [fol. 156] there are three pipe lines from the East Texas field to Shreveport where part of the oil is refined and shipped to a large number of states, while the rest is re-piped and reshipped to other points within and without Louisiana; that the other ten pipe lines serving East Texas are the Gulf Refining Company line to Port Arthur, The Humble Oil Company line to Mexia, Houston and Bayton, the Stanolind Oil Company's line to Mexia, the Texas Company's line to Port Arthur, the Texas Company's line to Sand Springs, Oklahoma, the Sun Oil Company's line to Beaumont, the Prairie Pipe Line Company's line to Mexia, the Texas-Empire Company's line to Atreco, Texas, the Atlantic Refining Company's line to Port Arthur, and the Tidal Oil Company's line to the Gulf Coast; and that from the above terminal points the oil or products thereof passes on to other states.

He further stated that another portion of the oil from East Texas is transported by rail some to New Orleans and some northward through Oklahoma and Arkansas.

He further stated that about 90% of all the oil produced in the East Texas field is transported and disposed of as above stated; that of the 10% refined in local refineries, about sixty per cent is shipped by rail to states other than Texas; and that in all, over 85% of the crude oil produced in the East Texas field goes into interstate or foreign commerce, either in the shape of crude oil or the products thereof.

He further stated that there are approximately 560 refineries located throughout the United States, most of which are concentrated in the States of New Jersey, Pennsylvania, Delaware, Ohio, Indiana, and Illinois, and in Texas, Louisiana, and Oklahoma, and also in the Los Angeles Basin and at San Francisco Bay; that the states of [fol. 157] New York, New Jersey, Pennsylvania and Ohio, in the year 1932, refined approximately 20% of the total gasoline refined in the country; Illinois and Indiana approximately 15%; Texas approximately 22%; Oklahoma approximately 7%, and the State of California approximately 16%.

The defendants introduced in evidence a statement of Avary H. Alcorn, an employee of the Department of the Interior, Division of Investigations, who stated that there were, on November 20, 1933, 4,913,960 barrels of crude oil in steel storage located in Gregg, Rusk, Smith, Upshur and

Cherokee Counties, Texas, according to the records of the Department of the Interior, Division of Investigations; that there were approximately 930,317 barrels of oil which, according to the records, was illegally produced; and that the major portion of the 930,317 barrels classed as illegally produced oil was produced between the dates of April 26, 1933 and September 5, 1933.

The defendants introduced in evidence a statement of J. H. Leech, who stated that he is a Special Agent of the Division of Investigations of the Department of the Interior; that since July 14th he has been engaged in enforcing the regulations issued by the Secretary of the Interior on July 15th and July 25th, 1933, under Section 9 (c) of the National Industrial Recovery Act; that under said regulations, certain reports are required of producers, refiners, brokers, shippers and transporters of crude petroleum; that early in July representatives of the Department of the Interior examined the forms required by the Texas Rail- [fol. 158] road Commission of producers and others and, in order to relieve any producer or other member of the industry of any hardship in making reports, arranged with the Railroad Commission to alter slightly some of their forms so that those forms, when filed by the producers or other members of the industry, would also meet the requirements of the Department of the Interior; that the report from the producer showing the amount of oil produced and the disposition thereof has been made monthly to the Railroad Commission of Texas on a form known as EB; that the form is furnished by the Railroad Commission and the Governmental Agency without cost to the producer; that it is filed with the Railroad Commission and a copy is furnished the *Division of Investigations through the Rail*road Commission; that this form has long been in use by the Railroad Commission and the furnishing of the information to the Federal Government through the method stated above could not place any undue burden upon any producer; that the information requested on form EB can be easily furnished by any producer or operator, as such should be in his possession for the successful operation of his business and for the further reason that such data would be necessary in preparing gross tax payments to the state and income tax returns to the Federal Government.

He further stated that the information requested of members of the industry is essential for the reason that the reports show oil produced, transported and the distributions thereof; that this information cannot be obtained from sources other than the producers, operators, and other members of the industry who are requested to report; and that the reports are reasonable, since they request only that information which operators, refiners and others required [fol. 159] to make reports have at their finger tips in order to carry on their own individual business.

He further stated that the only alternative to requiring reports would be for the State and Federal Government to maintain a force in the East Texas oil field of some 25,000 to 28,000 men; that this is due to the large number of producing wells in the field (11,490), to the size of the field, to the vast network of pipe lines and gathering systems originating in the field, and to the close proximity of many refineries to producing wells; that there is no other method within his knowledge to check the source of interstate shipments of "hot" oil, and its products; and that by requiring reports, it can be determined who are engaged in transporting oil, which is produced in violation of valid State regulations, and its products, in interstate commerce.

The defendants introduced in evidence a statement by Archie D. Ryan, who stated that his official position is Special Agent in Charge, Division of Investigations, Department of the Interior, and that since July 14, 1933 he has been assigned to East Texas in the enforcement of the Regulations issued by the Secretary of the Interior of July 15th and July 25th, 1933. He further stated facts which agree substantially with the statement of J. H. Leech, as summarized above.

The defendants introduced in evidence a statement by C. R. Starnes, who stated that he is President of Texas Oil Products Company and is familiar with conditions in the oil business in the State of Texas during the past three years and especially with respect to the purchase of crude [fol. 160] oil for refinery operations and the sale of refined products; that a large part of the oil produced in Texas is transported out of the State and 85% of the products of petroleum refined in the State is shipped out of the State; that overproduction results in oil selling far below the reasonable cost of production, resulting in price cutting, affecting markets throughout the nation; that there is a great deal of oil produced in Texas in excess of the allowable fixed by the Railroad Commission; that such oil is secretly produced and is almost invariably sold at prices below the prevailing market price to refineries generally located near the field; that the refineries which purchase "hot" oil sometimes ship part of it outside of the State; that the refined products of the portion refined within the State often reach customers outside the State at prices lower than the prevailing prices. He further stated that competition of this character is unfair and affects prices over wide areas; that legitimate refineries have to cut their prices to meet the prices given by "hot" oil refineries, with the result that the entire national market is demoralized and great losses occur to royalty owners and law abiding refiners and producers and that the sale of "hot" oil and its refined products, even if confined to the State of Texas, materially affects and burdens interstate commerce in oil and its products.

He further stated that it is impossible by looking at a barrel of oil or at its refined products to tell whether it was illegally produced; that it is extremely difficult to check all producers over a twenty-four hour period, especially in East Texas, where refineries own production and are directly linked to producing wells; that the vast systems of pipe lines, together with other methods of transportation are so numerous and intricate that it is extremely difficult to trace the source of oil or to determine whether the movement [fol. 161] is intrastate or interstate; that a simple, reasonable and effective way to check production and trace the movement of petroleum is to ascertain the amounts received or purchased by refineries, the name of the seller, or person delivering and the subsequent disposition of the oil or its products; that forms have been provided for this purpose which cause no undue inconvenience or burden; that many refineries gladly give the information desired and that he believes in order to detect "hot" oil or its products, it is necessary to require reports from refineries and to use other means, such as inspection, to check the accuracy of such reports and that no undue burden is imposed thereby upon refineries.

The defendants introduced in evidence a statement by Col. LOUIS S. DAVIDSON, who stated that he was in the East Texas Oil Field from August 17, 1931 to December 20, 1933, as Provost Marshal until March, 1932, and thereafter as Commander of the Military District under martial law for the purpose of assisting the Railroad Commission in enforcing proration; and that since that time he has been in close contact with the operations in the East Texas Field and is familiar with the same. He further stated that during his experience in the Field, all of the refineries, with the exception of two or three, had their own pipe lines or gathering systems; that these refineries did not use seals on the lock stops or the tank batteries located on the leases, from which they received oil, as is required by legitimate pipe line companies; that these lock stops can be opened at will, allowing oil to flow from the lease to the refineries at the same time that the well is producing oil into tanks; that the Chief Refinery and the Southern Oil & Refining Company have wells flowing directly to storage tanks at the refineries; that it is impossible to determine the amount of [fol. 162] oil produced from the lease to which these refineries are connected, without keeping a man on duty at each of such wells continuously, or without gauging the storage tanks located at the refinery; that he is familiar with the pipe line system in Gladewater and Kilgore, Texas; that oil can be delivered from any point in the East Texas Oil Field, to almost any refinery in the Field and can be delivered from one refinery to another; that during May, June and July, 1933, hundreds of cars of crude oil were loaded and shipped out of the East Texas Field by refineries; that the A & P Oil Company, which is Anding & Potter, the owners of the Panama Refining Company, ship hundreds of cars to the Coast, where they were put into foreign and interstate commerce; that there are numerous cases where the surplus overproduced oil has gone to the refinery and the royalty owner has received one price for his legal oil and a small price for the excess oil; that in many cases royalty owners did not receive payment at all for the overproduced oil; that it is useless to check pipe lines, leases and movements of oil by tank cars, unless refineries are also checked; and that unless all outlets are checked, there is no way of arriving at the total production in the East Texas Field.

The defendants introduced in evidence a statement by D. W. **Hovey**, who stated that he is Vice President of the Republic Oil Refining Company; that he is familiar with the oil business in the State of Texas during the past three years and especially with respect to the storage of crude oil for refining operations and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

[fol. 163] The defendants introduced in evidence a statement by J. D. **Wrather**, who stated that he is President of the Overton Refining Company and that he is familiar with conditions in the oil business in Texas during the past three years, and especially with reference to the purchase of crude oil for refinery operations and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by G. A. **Sadler**, who stated that he is General Manager of the Tyler Refining Company and that he is familiar with the oil business in the State of Texas during the past three years, and especially with reference to the purchase of [illegible] statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by J. G. **Puterbaugh**, who stated that he is President of Blue Star, Winston, Kenwood and Red Star Oil Companies; that he is familiar with the oil business in the East Texas Field; that much of the oil produced in Texas is transported out of the State; that overproduction has, time and time again, destroyed the price structure and has caused oil to sell in the East Texas Field at the small figure of 10¢ per barrel; that in reporting the production of oil from his property, he submits monthly reports to the Railroad Commission of Texas on the E-B form furnished him without cost; that a copy of this report is furnished the Department of the In- [fol. 164] terior under Regulations IV, issued by the Secretary of the Interior; that the preparation of this report does not work a hardship upon him, or upon any other producer; that it is easily prepared and the information required is essential to the operator for his own knowledge and the successful operation of his property; and that the reports required by Regulations IV and other regulations are reasonable.

The defendants introduced in evidence a statement by H. F. Richardson, who stated that he is Assistant Secretary and Treasurer of Texas Oil Products Company; that he is familiar with the oil business in Texas and especially with respect to the purchase of crude oil for refining and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by J. R. Pearson, who stated that he has been an independent oil producer for the past twenty years, with properties in the State of Texas and properties in the East Texas Field for the past two and one-half years; that he has been active in a personal way in assisting the Railroad Commission and the military forces in an endeavor to see that the proration

he and his partners own oil properties in the East Texas Field which, with stabilization and orderly production, are worth over $1,000,000.00, but that with stabilization such as has existed for the past two years, he would lose these properties, leaving him in debt over $300,000.00. He further stated that he has abided by the proration laws, [fol. 165] although others have become rich by breaking them; that he believes the proration program to be proper and right; that during the period of his operation in the Field, he has had close contact with all classes of operation, including production, refining, pipe lines and trucking; that practically all the refiners in the Field have their own pipe lines or gathering systems and many also own their own wells; that these refineries do not use seals or lock stops on the tank batteries located on the leases, with the result that the lock stops can be opened at any time, allowing oil to flow to the refinery at the same time the well is producing into the same tanks; that he is familiar with the same small pipe line systems connecting these refineries in the East Texas Field; that these lines are so interconnected that oil can be delivered from practically any point in the Field to these refineries and can be delivered from one refinery to another; that royalty owners whose leases are connected to these refineries have no way of knowing how much oil is produced; that he personally owns an interest in the two leases operated by the East Texas Refinery; that in the months of January, February, March and April, 1933, they sent him checks with statements attached for the proper allowable and in the same envelope each month was another check without the statement for eight to ten times the amount of the allowable check; that he returned these checks and requested a statement of the oil run, which it took several months to obtain; that on checking these figures on the oil run, it was discovered that the greater part of this oil, which was reported for January, February, March and April, 1933, was really run in June, July, August, September and December of 1932, when the posted price for oil was higher; that the refineries paid others 40¢ a barrel at the same time they paid him 25¢ a barrel for oil from the same lease; that daily reports from the refinery [fol. 166] would have prevented this overproduction; that because of the intricate system of pipe line connections between wells and refineries and between refineries, it is absolutely impossible to know the amount of oil the refineries handle or whence it comes, unless reports are required; reports from refineries are necessary to supplement reports from pipe lines and producers; that many refineries in the East Texas Field are making these reports and that he believes the reason others refuse to make the reports is because it will disclose the amount of "hot" oil which they are handling.

The defendants introduced in evidence a statement by J. Frank Graham, who stated that he is President of the

Texarkana Oil Company and is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. H. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement made by M. T. **Flanagan**, who stated that he is sole owner of Flanagan Production Company and is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement by J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by H. B. **Walker**, who stated that he is Superintendent of the [fol. 167] Galvez Oil Corporation and that he is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement by J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by W. R. **Nicholson**, who stated that he is interested in oil producing property in the East Texas Field; that the reports required under the Regulations issued by the Secretary of the Interior are reasonable and have not worked a hardship on anyone and that the reports call only for information that each operator necessarily has to know in the successful operation of his own business.

The defendants introduced in evidence a statement by R. J. **Rauck**, who stated that he is Secretary-Treasurer of Wise and Jackson and that he is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable, and have not worked a hardship on anyone and that the reports call only for information that each operator necessarily has to know in the successful operation of his own business.

The defendants introduced in evidence a statement by W. J. COLLINS, who stated facts which agree substantially with the statement by W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

[fol. 168] The defendants introduced in evidence a statement by R. W. FAIR, who stated facts which agree substantially with the statement by W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

The defendants introduced in evidence a statement by W. A. WISE, who stated that he is President of Jackson, Wise & Sneeden, and that he is familiar with conditions in the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by FRANK C. CONDIN, who stated facts which agree substantially with the statement of W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

The defendants introduced in evidence a statement by A. D. RYAN, who stated that he is Special Agent in Charge of the Division of Investigations, Department of the Interior at Tyler, and that he has become familiar with the methods employed in producing oil in said field and in transporting, marketing and refining said oil. He further stated that the greater portion of oil produced in East Texas leaves the field in common carrier pipe lines which form an artery in interstate and foreign commerce; that [fol. 169] a barrel of oil from the East Texas field may move by this system to the Atlantic Seaboard, or it may move to the Gulf ports of Texas to be shipped from Texas ports to foreign countries; that most of the oil which is not taken from the field by pipe lines moves into refineries located in the field; that the products from the refineries go into tank cars or into motor truck tanks to be taken into other states; that oil which goes into the pipe lines to be transported to refineries at points distant from the East Texas field is commingled with the other oil; that likewise oil produced in the East Texas field which goes to refineries located there is commingled in the storage tanks as common stock gathered for said refineries by pipe lines known as gathering lines; that in some cases wells, pipe lines and refineries in the East Texas field are controlled by common ownership; that producers in the East Texas field, in his opinion, know that their oil is commingled as common stock either at the refineries, or in the pipe line, and that a great portion of such common stock moves in interstate commerce.

He further stated that a producer agrees to and takes part in such movement in that he places stock tanks on his lease into which he flows oil from his wells, and that he agrees that a pipe line company engaged in business as common carrier connect the pipe line with the tank and that the pipe line company may take the oil out of the tank for the purpose of mixing said oil as common stock with oil taken from the field and that said pipe line company may transport said oil to a producer either within or without the State and that during said shipment the oil is moving with and is a part of the oil which is actually being transported in interstate commerce. He further stated that the producer of oil assists in this movement because he takes part in its delivery in the same manner as if he had delivered the oil into a railroad tank car on a through run, passing [fol. 170] through several states. He further stated that because of this commingling of oil in the transporting system, it is necessary that the employees of the Division of Investigations be permitted to have access to all oil in order to be able to determine and verify the disposition of any oil and that oil accumulated in pipe lines for transportation constitutes a continuous movement in interstate commerce, since a large portion of the same forms the supply to the large refineries in Illinois, New Jersey, Pennsylvania, Ohio, Oklahoma and Louisiana.

The defendants introduced in evidence statements by J. W. CLARK, J. M. SHAW, J. P. CANSLER, R. J. COCKE, VOYT WILLIAMS, GUY CRISMAN, G. O. SANDERS and J. M. MILSTEAD, all of whom stated that the Cockburn-Boase leases have been producing more oil than is permitted by orders of the Texas Railroad Commission.

In addition to these statements, there was introduced a letter upon the letter-head of "Cockburn and Boase", dated April 19, 1933, and addressed to J. P. Cansler, which stated in part:

"It is the desire of this Company to run excess oil from this lease and, since you are interested, this firm would like for you to mail to them at P. O. Box 205, Arp, Texas, a letter stating the amount of your interest and also that you are willing for the firm of Martin and Cockburn to run excess oil, obtaining the best market price available to them and receive in full the money for this oil, then paying to you your pro rata part of said money collected for oil sold. * * * To enable us to operate this lease without an actual loss of money, we are required to sell more than is com- [fol. 171] monly called the allowable. To keep in business and to protect our investment, we have definitely decided to take this action. You must either join with us, or produce your own storage for your oil and every barrel of oil that belongs to you will be placed in said storage."

The letter was signed "Martin and Cockburn."

The defendants introduced in evidence statements by J. F. MAGEE, W. O. HARDIN, ERNEST A. SESSUMS, C. P. PORTER, F. H. JONES, KENT B. KNOX, HOWARD E. TYSON, and JAMES H. HALE, all of whom stated that the properties owned by R. J. McMurrey and M. H. McMurrey have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statements by C. E. Tabor, W. E. Florey and Sam Warren, J. J. McRoberts, W. H. Franklin and O. B. Taylor, all of whom stated that the properties of the Anding & Potter Oil Company have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statemnets by Jos. L. Quinn, J. N. Inglish, Wilson Keyes, J. H. McClure and George H. Black, all of whom stated that the properties of Charles M. Cope have been producing more oil than is permitted by the orders of the Railroad Commission of Texas.

[fol. 172] The defendants introduced in evidence statements by J. H. Wright, D. D. Alexander, Barney Carter, L. C. Peters, J. L. Lenamon, Walter S. Behrens, J. H. Wright and C. H. Westbrook, all of whom stated that the properties of the Amazon Petroleum Corporation have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

Mr. Behrens also stated that the crude oil illegally produced by the Amazon Corporation was commingled with other oil and placed in the Republic Oil and Refining Company's terminal, from which point the same was placed in foreign and interstate commerce, in violation of Section 9 (c) of the National Industrial Recovery Act.

The defendants introduced in evidence statements by W. G. Hanrahan, Bert McCray, J. M. Goodman and Frank C. Condon, all of whom stated that the properties of W. B. Turnbow, Trustee, have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statements by JOE DEU PREE, WILLIAM E. GUINN and J. G. FLOYD, who stated that on November 21, 1933, they discovered an illegal connection on the W. C. Turnbow Persons lease, Well No. 2, by which oil was being flowed to the Union Refining Company, no tenders having been obtained to run this oil, as is required by the State laws; that this procedure is a means employed to deliver excess oil to refineries known as a "by-pass", so that the amount of oil on the lease cannot be determined by gauging storage tanks located thereon; and that part of the oil so by-passed is [fol. 173] shipped in interstate commerce after it is refined by the Union Refining Company.

The defendants introduced in evidence a statement by SAM KIMBERLIN, who stated that he is District Tax Supervisor, Motor Fuel Division of the Comptroller's Department of the State of Texas; that for the month of August, 1933, Oil Refineries, Inc., located near Overton, Texas, reported interstate and export shipments of motor fuel in the total amount of 1,389,768 gallons and that the reported destination points for such shipments included South Carolina, Ohio, Michigan, Wisconsin, Mississippi, Arkansas, Illinois, Tennessee, Minnesota, Kentucky, Louisiana, Indiana, Nebraska, Iowa, Missouri and Georgia, and that of the 731,227 gallons of motor fuel shipped by five other East Texas refineries, namely, Owl Refining Company, Inc., Foshee Refining Company, Lake Refining Company, Panama Refining Company and Locke Refinery, Inc., 395,075 gallons, or 54 per cent of the total was shipped in interstate or foreign commerce.

The above and foregoing is all the evidence necessary for a review of the rulings assigned as error on this appeal introduced at the trial of said cause and all proceedings had in the trial thereof.

Wherefore, Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants and appellants, pray that the above statement of evidence be settled, approved and allowed by the above entitled court as a true, full and correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal taken and given on the trial of said cause, for use on the appeal [fol. 174] taken to the United States Circuit Court of Appeals for the Fifth Circuit.

Dated this 30 day of March, A. D. 1934.

Charles Fahy, Douglas Arant, Chas. I. Francis, Spl. Asst. to the Atty. Genl., Attorneys for Defendants and Appellants.

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated that the above and foregoing statement of evidence is a true and correct statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal and the same may be approved by the Judge without notice.

Charles Fahy, Douglas Arant, Chas. I. Francis, Attorneys for Defendants and Appellants. W. T. Saye, Saye, Smead & Saye, F. W. Fischer, Edward Lee, Attorneys for Plaintiffs and Appellees.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

The foregoing statement of evidence is in all respects hereby approved and settled as a true and correct statement of all the evidence necessary for a review of the rulings assigned as error on this appeal and adduced on the trial of the above entitled action.

Dated this 2nd day of April, A. D. 1934.

Randolph Bryant, United States District Judge.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DECREE—Filed Feb. 21, 1934

Came on to be heard said above styled and numbered cause, together with the above numbered causes consolidated therewith; and thereupon came the complainants in equity cause No. 652, Amazon Petroleum Corporation, a corporation, Barney Cockburn, E. J. Boarse, Charles M. Cope, and W. C. Turnbow Petroleum Corporation, a corporation, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 667, Trans-State Corporation, A. H. Tarver, Pelican Natural Gas Company, Dimham Oil Corporation, Oriental Oil Company, K. E. Merren, Canico Oil Company, Adco Oil Company, Laco Production Company, Lexena Oil Corporation, and E. J. Moran, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 505 Ortiz Oil Company, Inc., and Deere Creek Oil Company, with their attorney, F. W. Fischer; and came also complainants in equity No. 657, A. F. Anding, Southport Pe- [fol. 176] troleum Company, a corporation, Ironrock Oil Corporation, a corporation, Independent Producers, a corporation, and W. Holloway, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 595, Imperator Oil Corporation, Overton Refining Company, Kilgore Refining Company, K. W. P. Witt, O. L. Hastings, A. N. Landers, W. M. McVey, T. E. Owen, J. Curtis Sanford, Roy Howell, Yandell Rogers, E. J. Bartels, W. H. Wilson, T. J. Whitesides, George F. Thaggard, Arrow Refining & Producing Company, Double L Oil Company, P. D. Bolen, Carl Dunham, J. M. Lapin, G. A. Franklin, and R. S. Harper, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 621, M. E. Trapp and McMurrey Corporation, with their attorneys, F. W. Fischer and W. Edward Lee; and came also complainants in equity cause No. 665, Coffman Production Company, a corporation, and Cemo Production Company, a corporation, with their attorney, F. W. Fischer; and came also the defendants, Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil E. Baer, United States Marshall for the Eastern District of Texas, with their attorneys, and announced ready for trial; and the United States District Judge Randolph Bryant, upon an examination of the pleadings, ascertained that complainants sought to enjoin certain State officers from enforcing certain proration orders of the Railroad Commission of Texas, and in the same Bills of Complaint sought to enjoin the above-named Federal officers from enforcing certain regulations and provisions of the Code of Fair Competition for the Petroleum Industry issued and promulgated under the authority of the National Industrial Recovery Act, and it appearing to said District Judge that the cause [fol. 177] of action stated against the State officers presented a case requiring the convening of three judges, the aforesaid District Judge called two judges to his assistance and set the hearing upon application for interlocutory injunction on both causes of action at the same time.

Upon assembling, the statutory three-judge court suggested its want of jurisdiction of the cause of action against the Federal defendants above named as not within Section 380 of the United States Code, and that the cause of action was one for the consideration of the District Judge. Thereupon, all parties desiring the Bills of Complaint to be heard and determined as to both causes of action, it was in open court agreed by all parties, the Judges consenting, and made a matter of record, that each cause should be regarded as submitted to, and to be decided by the tribunal having jurisdiction of it. Upon the conclusion of the evidence it was suggested that the suits be submitted both on the application for interlocutory injunction and on the merits, and the complainants, although pressing their applications for an interlocutory injunction, agreed that the cases might also be submitted upon the merits.

And the Court, being of the opinion that the Bills of Complaint stated two separate and distinct causes of action, one against the State officers, requiring the consideration of three judges, and the one against the above-named Federal defendants, over which the District Judge only had jurisdiction, the two cases were severed and it was ordered that this cause be submitted to the District Judge upon the evidence adduced as against the Federal defendants, and on behalf of the Federal defendants, at the trial before the three Judges, it being stipulated that the issues raised by the pleadings were those presented in the original and supplemental Bills of Complaint filed by the Amazon Petroleum Corporation et al. and the answer [fol. 178] therein filed by the above-named Federal defendants in equity cause No. 652.

And the Court having considered the pleadings, evidence, argument and briefs of counsel, finds that complainants are entitled to injunctive relief against the Federal defendants above named.

It is therefore ordered, adjudged and decreed that the said named defendants, Archie D. Ryan, Special Agent of the Division of Investigations of the Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil. E. Baer, United States Marshall for the Eastern District of Texas, and each of them, their agents, deputies, representatives, and employees, be and they are hereby perpetually enjoined and restrained from enforcing or attempting to enforce against the complainants above named, their agents and employees, Section 4, Article 3, of the Code of Fair Competition for the Petroleum Industry issued and promulgated under and by virtue of the authority contained in the National Industrial Recovery Act; and said named defendants, their agents, deputies, representatives and employees be and they are hereby perpetually enjoined and restrained from requiring of said named complainants, their agents, servants and employees, the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior under the authority contained in Section 10 (a) of the National Industrial Recovery Act; and said defendants and each of them above named, their agents, deputies, representatives, and employees, are further permanently enjoined and restrained from instituting any actions of a civil or criminal nature against said complainants, or either of them, for [fol. 179] alleged violations of the aforesaid Code provisions and regulations above mentioned, and are further perpetually enjoined and restrained from going upon the property of said complainants above named under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned.

It is further ordered, adjudged and decreed that the complainants have and recover of and from the defendants and each of them, all of their costs herein expended in this proceeding subsequent to the 17th day of February, 1934, the date upon which the decree in the statutory three-judge court above mentioned was entered, for which said costs accruing since said time execution may issue as upon a judgment at law.

It is further ordered, adjudged and decreed that the Bill of Complaint as against the defendant, J. Howard Marshall, be and the same is hereby dismissed, and that he go hence without day with his costs in this behalf expended, for which he may have execution as in a judgment at law.

It is further ordered, adjudged and decreed that the Marshal serve upon said named defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer, a copy of this Order.

To the aforesaid Order and Decree the said defendants, and each of them, in open court duly excepted.

Dated this the 21st day of February, A. D. 1934.

(Signed) Randolph Bryant, United States District Judge.

Approved as to form.

Saye, Smead & Saye.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

MOTION FOR FILING FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 17, 1934

Now come the defendants in the above entitled and numbered cases and move this Honorable Court to file its Findings of Fact specially and state its Conclusions of Law thereon in conformity with Equity Rule 70½.

Dated this 14 day of March, A. D. 1934.

(Signed) Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 17, 1934

This cause, above styled and numbered, together with the numbered causes consolidated therewith, came on to be heard before this Court on December 14, 1933; came the various parties complainant with their attorneys and the various parties defendant with their attorneys; and there- [fol. 181] upon said cause was heard on the application for temporary injunction and by agreement of all the parties and with consent of the Court it was stipulated, at the conclusion of the testimony, that this cause also should be determined upon its merits; and the Court having considered the pleadings, evidence, arguments and briefs of counsel upon the issues presented, under the stipulation that such issues were those made by the Bill of Complaint and the supplement thereto filed by the Amazon Petroleum Corporation and the answer and supplement thereto filed by defendants, makes the following findings of fact:

I

That the complainants and each of them are engaged in the production of petroleum in the East Texas Field; that none of the complainants is engaged in shipping petroleum or the products thereof either intrastate or interstate, but all the oil produced by the complainants is sold on the premises where it is produced and title to such oil passes from the complainants upon its being delivered to the buyers on the premises; and that the acts of the complainants do not affect interstate commerce, except incidentally or remotely.

II

The evidence does not show that the complainants have or intend to operate their properties so as to result in waste or destruction of the natural resources of the nation so as to imperil the needs or requirements of the Army or Navy and the national defense of the nation.

III

That the defendant, Archie D. Ryan, is acting under the direction of the Secretary of the Interior to whom the President of the United States has delegated his [fol. 182] powers and duties under the National Industrial Recovery Act for the purpose of enforcing Section 9 (c) thereof, and who, also, pursuant to the Presidential authority, acts as Administrator of the Code of Fair Competition for the Petroleum Industry; that the defendant S. D. Bennett is a duly appointed, qualified and acting United States Attorney for the Eastern District of Texas; and the defendant Phil E. Baer is the duly appointed United States Marshal for said district.

IV

That the defendant, Archie D. Ryan, while purporting to act under the direction and as Agent of the Secretary of the Interior pursuant to authority of the National Industrial Recovery Act as a matter of fact is acting beyond his lawful authority and is sued herein as an individual and not as an Agent of the Secretary of the Interior or of the United States Government, and while the defendant, Archie D. Ryan purports to be engaged in regulating interstate commerce under the order of the President made pursuant to Section 9 (c) of the National Industrial Recovery Act, and to be enforcing Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, as a matter of fact he is attempting to regulate the amount of oil that complainants may produce from their wells and to restrict the production to the allowable fixed by the Railroad Commission of Texas and the allowable fixed by the Code of Fair Competition for the Petroleum Industry.

V

That in demanding the reports complained of by the complainants and demanded under Regulation IV issued by the Secretary of the Interior pursuant to Section 10 (a) of [fol. 183] the Act in demanding the right to go upon, inspect properties, and gauge the tanks of the complainants, the defendant, Archie D. Ryan, is merely seeking to obtain information and evidence which will enable him to accomplish his real purpose of regulating and restricting production from complainants' wells and is demanding these reports and the right to inspect said properties as incident to that objective; and that all of the defendants are threatening to prosecute or to cause complainants to be prosecuted and unless enjoined will prosecute the defendants for failure to make such reports and permit the inspection of their books and records.

VI

That defendants have continually entered upon the premises of the complainants without permission of complainants and have attempted to examine the complainants' books and records relating to production, and have attempted to gauge the tanks of the complainants without the consent of complainants and are threatening and will unless enjoined attempt to continue such acts and to enforce Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, adopted under Section 3 (a) of the National Industrial Recovery Act, against these complainants by criminal prosecutions under Section 3 (f) of said Act, and by proceedings in Equity under Section 3 (c) thereof; that certain respondents incident to such visitations have dug up and destroyed certain property about complainants' premises.

VII

That the acts of the defendant, Archie D. Ryan, in interfering with the complainants in the operation of their properties and in attempting to restrict the production therefrom and in attempting to compel the complainants to [fol. 184] furnish said reports and to subject their books and records to inspection and in attempting to go upon, inspect and gauge the tanks of the complainants, incident to regulating and restricting the production from their wells as above set forth, results in irreparable loss and injury to complainants from which they have no adequate remedy at law.

Wherefore, the premises considered the Court finds the following conclusions of law:

I

That the Secretary of the Interior is not an indispensable party to the cause of action asserted against the defendant, Archie D. Ryan.

II

That Regulations IV issued by the Secretary of the Interior and the sections of the Code of Fair Competition for the Petroleum Industry, as above set forth, are not authorized by the National Industrial Recovery Act and that the defendants in attempting to enforce said regulations and provisions of the Code of Fair Competition, as aforesaid, are acting without authority of law and their acts in so doing deprived the complainants of their property without due process of law.

To the foregoing findings of fact and conclusions of law, the said defendants and each of them, in open Court, duly excepted.

Dated March 16, 1934.

(Signed) Randolph Bryant, United States District Judge.

[fol. 185] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR SEVERANCE—Filed March 26, 1934

Now comes Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, and show to the Court that they filed their joint Assignment of Errors and Petition for Allowance of appeal from the decree entered in the above entitled cause on the 21st day of February, 1934; that each of their co-defendants, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, have waived service of notice of appeal and request to join therein; and that each of said co-defendants has further requested that a severance be ordered.

Wherefore, Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants herein, pray that the Court make an order of severance from their co-defendants, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, for the purpose of an appeal to the United States Circuit Court of [fol. 186] Appeals for the Fifth Circuit from the decree entered herein on February 21, 1934, and for such other and further relief as may be proper in the premises.

Dated March 26, 1934.

(Signed) Charles Fahy, (Signed) Douglas Arant, (Signed) Chas. I. Francis, Attorneys for the Above Named Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING SEVERANCE—Filed March 26, 1934

It appearing that the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, co-defendants in the above cause, have been duly notified and requested by Archie D. Ryan, S. D. Bennett and Phil E. Baer to join in said petition for appeal, but have failed or refused to join therein, the said Archie D. Ryan, S. D. Bennett and Phil E. Baer are hereby granted the right of appeal alone without joining said Rail- [fol. 187] road Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Milhusen, Nat Gentry and J. Howard Marshall as appellants.

Dated March 26th, 1934.

(Signed) Randolph Bryant, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF INTENTION TO APPEAL—Filed March 17, 1934

Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, hereby serve notice upon the complainants herein through their attorney of record of their intention to appeal to the United States Circuit Court of Appeals, Fifth Circuit, from the decree entered herein on the 21st day of February, A. D. 1934.

Charles I. Francis, Attorney for Defendants.

[fol. 188] Due and personal service of copy of the above notice of appeal is admitted this the 14th day of March, A. D. 1934.

Saye, Smead & Saye, Attorney- for Complainants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

F. W. Fischer, Attorney for Complainants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

Edward Lee, Attorney for Intervenor M. E. Trap.

[File endorsement omitted.]

[fol. 189] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND STAY OF INJUNCTION—Filed March 26, 1934

To the Honorable Randolph Bryant, Judge of said Court:

Archie D. Ryan, S. D. Bennett, and Phil E. Baer, your petitioners respectfully show:

1. Petitioners are the defendants in the above entitled cause.

2. On the 21st day of February, 1934, a final decree was entered in said cause against petitioners in the Tyler Division of the Eastern District of Texas.

3. An order has been entered severing petitioners herein from their codefendants for the purpose of an appeal.

4. Your petitioners consider themselves aggrieved by the decree aforesaid and believe there are manifest errors which are set forth in detail in the Assignment of Errors filed herewith and that an appeal may be taken by them from this Honorable Court to the Circuit Court of Appeals for the Fifth Circuit.

5. Unless this Honorable Court grants your petitioners a stay of said injunction pending disposition of the appeal herein to the Circuit Court of Appeals there will be grave and irreparable injury and damage done to your petitioners and to the many producers and refineries of petroleum and the products thereof throughout the State of Texas and elsewhere within the United States, and to the Secretary of the Interior in his efforts to administer the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

6. Your petitioners, and each of them, are employees of departments of the United States Government and have [fol. 190] been directed to prosecute appeal herein by said departments and, therefore, said appeal should be allowed without bond, obligation, or other security being required of them, as provided in Section 870, Title 28, United States Code.

Wherefore, your petitioners pray that an order be made allowing them to appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana; and that an order staying the injunction decreed be entered and the decree in all things be superseded pending said appeal; that no bond, obligation, or other security be required of them in connection with said appeal or stay, that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which the decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals.

(Signed) Charles Fahy, Douglas Arant, Chas. I. Francis, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed March 26, 1934

Comes now said Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, and file the following joint Assignment of Errors, upon which they will rely in prosecution of the appeal herewith petitioned for in said cause from the decree of this Court, entered on the 21st day of February, 1934.

1

The Court erred in refusing to dismiss the bills of complaint against the defendant Archie D. Ryan, in that the Court was without jurisdiction to entertain said cause as to him because of the absence in said causes of an indispensable party defendant, to-wit, Harold L. Ickes, Secretary of the Department of the Interior.

2

The Court erred in refusing to dismiss the bills of complaint against all of the defendants.

3

The Court erred in holding that Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is not authorized by the National Industrial Recovery Act and is illegal.

4

The Court erred in failing to hold that Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is valid and constitutional.

[fol. 192] 5

The Court erred in holding that Regulation IV is not authorized by Section 10 (a) of the National Industrial Recovery Act and is not reasonable and necessary for the enforcement of Section 9 (c) of said Act, and is illegal.

6

The Court erred in failing to hold that Regulation IV is valid and constitutional.

7

The Court erred in holding that the defendants are not authorized by Section 9 (c) of the National Industrial Recovery Act and by the Code of Fair Competition for the Petroleum Industry to go upon the property of the complainants for the purpose of inspecting books and records, and further doing such acts as are reasonable necessary in inspecting such properties, gauging tanks and examining pipes and pipe connections as not reasonable nor necessary for the enforcement of Section 9 (c) of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

8

The Court erred in failing to hold that in authorizing the acts described in paragraph 7 above the Code of Fair

Competition for the petroleum Industry and the National Industrial Recovery Act are valid and constitutional.

9

The Court erred in holding that the defendants are unauthorized to bring criminal prosecutions or actions in equity against complainants for violation of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry.

[fol. 193] 10

The Court erred in holding that the defendants are not authorized to prosecute or cause to be prosecuted the complainants for failure to submit reports required by Regulations IV.

11

The Court erred in holding that the transactions of the complainants are not in or directly affecting interstate commerce.

12

The Court erred in failing to hold that as a matter of fact 85 per cent of the oil produced in the East Texas field and of the products thereof moves in interstate commerce.

13

The Court erred in failing to hold that the preservation of the nation's petroleum resources is essential to the national defense and to the support of an army and the maintenance of a navy.

14

The Court erred in failing to hold that the production of petroleum in excess of the amount allowed by a valid state order demoralizes the interstate market for petroleum and its products on a nation-wide scale and has a direct effect on established channels of interstate commerce in petroleum and its products.

15

The Court erred in failing to hold that the production of oil in excess of the amount allocated by a valid State order causes a waste of natural resources resulting in a depletion of the nation's supply of oil which is necessary [fol. 194] to the movement of interstate commerce, to the national defense and to the support of an army and the maintenance of a navy.

16

The Court erred in holding that the defendants are requiring reports or making inspections for any other purposes than the purposes authorized by Section 9 (c) of the National Industrial Recovery Act and Section 3 of Article IV of the Code of Fair Competition for the Petroleum Industry.

17

The Court erred in holding that the defendant, Ryan, is acting beyond the authority delegated to him by the Secretary of the Interior.

18

The Court erred in finding that the defendants have dug up and destroyed certain property about the complainants' premises.

19

The Court erred in failing to hold that a nationwile emergency exists in industry generally, and specifically in the Petroleum Industry.

20

The Court erred in failing to hold that the production of petroleum in excess of the amount allowed by a valid State order constitutes an unfair trade practice within the meaning of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

[fol. 195] 21

The Court erred in finding that the actions of the defendants are causing, and, unless restrained, and will continue to cause irreparable loss and injury to the complainants.

22

The Court erred in finding that the defendants are depriving complainants of property without due process of law.

23

The Court erred in entering the decree granting a permanent injunction against the defendants.

24

The Court erred in entering a decree granting a permanent injunction against the defendants which restrained them from enforcing Article 4 of Section III of the Code of Fair Competition, requiring reports of producers under Regulation IV; and going upon the properties of the complainants in that said decree and injunction are not limited to the doing of such acts in connection with intrastate commerce.

Wherefore, defendants pray that said decrees may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated the 26th day of March, 1934.

(Signed) Charles Fahy, (Signed) Douglas Arant, (Signed) Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

[fol. 196] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 26, 1934

Upon petition of the defendants Archie D. Ryan, S. D. Bennett, and Phil E. Baer and it appearing to the Court that the appeal herein is being prosecuted pursuant to the direction of the Solicitor General of the United States and the Department of Justice, it is hereby ordered as follows:

1. That an appeal without bond is hereby allowed in the above-entitled cause to said defendants Archie D. Ryan, S. D. Bennett, and Phil E. Baer to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree heretofore entered in said cause on the 21st day of February, A. D. 1934, granting a perpetual and permanent injunction.

2. That the perpetual and permanent injunction issued under the authority of said decree not be stayed.

3. That a citation be issued directed to the complainants herein to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana, within thirty days from the day of taking said appeal as required by law.

4. That the Clerk of this Court transcribe, certify and [fols. 197-199] transmit to the said United States Circuit Court of Appeals for the Fifth Circuit, a true and complete transcript of the record and all other proceedings in this cause as required by law.

Done and ordered at Beaumont, Texas, this 26th day of March, A. D. 1934.

(Signed) Randolph Bryant, Judge of the United States District Court in and for the Eastern District of Texas.

[File endorsement omitted.]

Citation in usual form showing service on F. W. Fischer et al., filed March 26, 1934, omitted in printing.

[fol. 200] In United States District Court

Certificate—Filed March 26, 1934

Elijah Crippen, being first duly sworn, deposes and says:

I hereby certify that I am an officer working under the Attorney General of the United States in the Department of Justice, with the title of "Special Assistant to the Attorney General."

I hereby further certify that the Solicitor General of the United States and the Department of Justice have authorized and directed the following defendants, namely, Archie D. Ryan, S. D. Bennett, and Phil E. Baer, to take an appeal in said cause from the decree of this Court granting a permanent injunction, and to apply for an order staying and superseding said permanent injunction.

Elijah Crippen.

Subscribed and sworn to before me this 24th day of March, A. D., 1934. Mrs. H. I. Griffies, Notary Public in and for Smith County, Texas. My commission expires June 1, 1935. (Seal.)

[fol. 201] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF ELECTION FOR PRINTING RECORD—Filed April 2, 1934

Archie D. Ryan, S. D. Bennett, and Phil E. Baer, appellants in the above cause, hereby give notice of their election to take and file in the Circuit Court of Appeals for the Fifth Circuit to be printed under the supervision of its Clerk a transcript of the record herein.

This the 2 day of April, A. D., 1934.

Chas. I. Francis, Attorney for Appellants.

[File endorsement omitted.]

[fol. 202]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed April 2, 1934

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the appeal heretofore allowed herein, shall include the following:

1. Caption.
2. Bill in Equity.
3. Answer of the Defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer.
4. Amendment and Supplement to Original Bill.
5. Answer to Amendment and Supplement to Original Bill.
6. Amendment and Supplement Bill.
7. Stipulation of all parties, dated March 15, 1934.
8. Statement of the Evidence and Waiver of Notice.
9. The Decree.

10. Motion for Filing Findings of Fact and Conclusions of Law.
11. Findings of Fact and Conclusions of Law.
12. Petition for Severance.
13. Order Allowing Severance.
14. Notice of Intention to Appeal.
15. Petition for Appeal and Stay of Injunction.
16. Assignment of Errors.
17. Order Allowing Appeal Without Bond.

[fol. 203] 18. Citation on Appeal and Acceptance of Service thereof.

19. Certificate of Direction to Appeal.
20. Notice of Election for Printing Record.
21. Stipulation as to Contents of Transcript of Record.
22. Clerk's Certificate.

Charles Fahy, Douglas Arant, Chas. I. Francis, Special Asst. to Atty. Genl., Attorneys for Defendants and Appellants. W. T. Saye, Saye, Smead & Saye, F. W. Fischer, Edward Lee, Attorneys for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 204] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

No. 652. Equity

AMAZON PETROLEUM CORPORATION, et al., Complainants,

v.

RAILROAD COMMISSION OF TEXAS et al., Respondents

No. 635. Equity

PANAMA REFINING COMPANY et al., Complainants,

v.

A. D. RYAN et al., Respondents, And Cases Consolidated Therewith

OPINION OF THE COURT—Filed Feb. 12, 1934

BRYANT, District Judge:

In these related cases complainants attack the validity of an Act of Congress known as the National Industrial Recovery Act, and certain regulations of the Secretary of the Interior, the provisions of the Code for the petroleum industry established under the Act, upon constitutional grounds.

In the Anding and Panama Refining Company cases a rule to show cause was issued returnable October 2, calling upon the respondents, Ryan, et al., to show cause why a preliminary injunction should not be granted as prayed. On the hearing upon this rule, and the respondent's answer [fol. 205] thereto, the rule was discharged and the application for preliminary injunction denied. The cause was thereupon set for final hearing upon November 6th. Shortly thereafter, a similar attack was made upon the statute and the regulations by the complainants in the other cases listed above, in which the individual members of the Railroad Commission of Texas, their agents, the Attorney General of Texas, and various district and county attorneys of the State were made respondents, and in which the complainants invoking the Fourteenth Amendment, sought injunctive relief, interlocutory and final, to restrain enforcement against them of certain orders of the Railroad Commission limiting their production of oil.

It appearing that the latter cause of action presented a case for three judges, a statutory court was ordered assembled to pass upon the constitutional question raised.

The statutory court in limine suggested its want of jurisdiction over the cause of action against the Federal respondents as not within Section 380, and decided that such cause of action was for the consideration of the District Judge alone.

All parties desiring the application to be heard and determined as to both causes of action, it was in open court stated and agreed to by all parties, and the judges consenting, made matter of record, that each cause should be regarded as submitted to and to be decided by the tribunal having jurisdiction of it. It was further stipulated of record in the latter suits filed, that the suits be submitted on the evidence taken at such hearing, both on the application for interlocutory injunction and on the merits.

The pertinent portions of the Act of Congress involved are as follows:

[fol. 206] "An Act to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Industrial Recovery

Declaration of Policy

Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sonctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards [fol. 207] of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies

Section 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the [fol. 208] President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any trans-[fol. 209] action in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade, or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be [fol. 210] fined no more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Oil Regulation

Sec. 9 (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

[fol. 211] Rules and Regulations

Sec. 10 (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed or issued under this title shall contain an express provision to that effect."

The President, pursuant to the claim of power granted to him by said Section 9 (c), issued an Executive Order prohibiting the transportation in interstate and foreign commerce of all petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State.

The President duly delegated to the Secretary of the Interior his power and functions by Executive Order and authorized the Secretary of the Interior to make all necessary or desirable rules or regulations.

Thereafter, the Secretary of the Interior issued rules and regulations purporting to effectuate said Executive Order and Section 9 (c) of the Act. It is paragraph 4 and 5 of these rules and regulations which are attacked in [fol. 212] the present suits and they provide substantially as follows: Regulation 4 requires each producer of petroleum to file a statement under oath not later than the 15th day of each month with the Division of Investigations of the Department of Interior, giving (1) the residence and post office address of the producer; (2) the location of his producing properties and wells, the allowable production therefor as fixed by the State agency; (3) the daily production in barrels; (4) details of deliveries of petroleum and the amount in storage at the beginning and end of the month; and (5) a declaration that no part of the petroleum or products thereof produced and shipped has been produced or withdrawn in violation of State law or valid regulation.

Regulation 5 requires every refiner to file a statement not later than the 15th of each month, with said Division of Investigations, containing the following information: (1) the residence and post office address of the refiner; (2) the place and date of receipt, with names and business addresses of the producers or parties from whom the petroleum was received, the amount received, and the amount held in storage on the last day of the calendar month preceding the period covered by the report; (3) details as to the disposition of said petroleum and the amount held in storage or otherwise at the end of said calendar month; (4) a declaration that to the best of the information and belief of the affiant, none of the petroleum received or disposed of, was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by State law or valid regulation.

The Code of Fair Competition, as provided for in Section 3 (a) of the Act, as it relates to the petroleum industry, provides among other things as follows:

(a) That complainants and other producers engaged in [fol. 213] the producing of oil shall pay their employees not less than a specified wage;

(b) Shall not work their employees in excess of a specified number of hours per day;

(c) That all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) That complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, and that the schedule of hours of all such employees conform to these prescribed by said code;

(e) That complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) That complainants, and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a Planning and coordinating Committee appointed by the President;

(g) That not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) That required production of oil to balance consumer demand for petroleum products shall be estimated by a [fol. 214] Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The general claim of complainants as against respondents is substantially as follows: that the complainants (producers) are not engaged in shipping any oil either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases and title to such oil passes from complainants upon its being delivered to buyers on the premises where it is being produced. They further claim that the respondents are purporting to act under authority conferred by the National Recovery Act, the Executive Order above referred to, and that the President, assuming to act in his official capacity but without any authority whatever, approved and promulgated what is known as the Code of Fair Competition for the Petroleum Industry, and that by the Executive Order referred to, he attempted to delegate to the Secretary of the Interior full power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry. That the respondents are attempting to enforce the aforesaid code and orders as against these complainants and as an incident to such enforcement are demanding of and compelling complainants to furnish them with reports required by the regulations referred to above, and that as an incident to the enforcement of such demand, they make repeated inspections of complainants' properties and gauge their tanks to ascertin the amount of oil being produced by them. That certain respondents, [fol. 215] incident to such visitations have dug up and destroyed certain property about complainants' premises, and will in the future continue to assert such rights of visitation and inspection and invasion of complainants' property rights unless restrained from so doing; that the Federal officers have stated that if the complainants do not comply with said orders and regulations and provisions of the code, they will cause them to be arrested and prosecuted under Section 9 (c) of the National Recovery Act, and that unless restrained said Federal officers will institute and prosecute actions, both civil and criminal against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

The only difference in the case made as to the refiners is that they are engaged exclusively in the production and manufacture of products from crude petroleum; that they are not engaged in interstate commerce and that none of their products when sold by them go into the channels of interstate commerce.

The evidence is without contradiction that the complainants in this case are not actually engaged in interstate commerce.

The claim is made that the provisions of the National Recovery Act, code and regulations, are null and void because:

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

(c) It authorizes the President to exercise police powers not granted to the National Government by the several [fol. 216] states of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainants of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Federal Government the right to compel the complainants and others to produce their papers and effects, compels them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 7th Amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishment.

To this claim or right by complainants, respondents answer by saying in general that under a declared emergency the powers of Congress are expanded beyond their extent under ordinary circumstances, and in ordinary times, and that under the commerce clause, the Federal Government has the power to control the production of petroleum, and that while ordinarily the production of oil or refining thereof is not interstate commerce, that this may so affect interstate commerce so as to come within the regulatory power of Congress. That the Act does not constitute an unlawful delegation of legislative power and is valid.

The majority opinion this day filed has adjudged that [fol. 217] the orders of the Railroad Commission of Texas are valid.

For the purposes of this opinion, it may be conceded that Congress may prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted. The further exceedingly doubtful concession may be made that the Act does not delegate legislative power and authority to the President so that the essential point for decision is as to the validity of the regulations issued by the Secretary of the Interior and the provisions of the code and their binding effect, if any, upon the complainants, under the facts disclosed in this matter.

The above concessions and assumptions are indulged because I have reached the conclusion that the regulations and the code provisions involved have no constitutional basis as applied to the facts of this case.

This is another of those cases which have so frequently engaged the attention of the national courts involving as it essentially does a contest between state and Federal authority and more particularly the extent to which the Federal Government may go in its exercise of authority in regulation of matters ordinarily committed to the regulation of the States.

Owing to the apparent importance of the matter, a statement of my reasons for the conclusion reached is deemed proper.

It has been decided specifically and unequivocally by the Supreme Court that mining is not interstate commerce and the power of Congress does not extend to its regulation as such. United Mine Workers of America v. Coronado Coal Company, 259 U. S. 407. Champlin Refining Co. v. Corp. Comm., 286 U. S. 210.

[fol. 218] As said by the Supreme Court in Oliver Iron Mining Co. v. Lord, 262 U. S. 171, 178: "Mining is not interstate commerce but like manufacturing is a local business subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."

The decisions of the Supreme Court further show that the making or manufacturing of goods are not commerce nor does the fact that these things are to be afterward shipped or used in interstate commerce make their production a part thereof. Hammer v. Dagenhart, 247 U. S. 251, 272.

The Supreme Court said in the famous Child Labor case: "The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. Pipe-line cases, 243 U. S. 548, 560. The maintenance of the authority of a State over matters purely local is as essential to the preservation of our existence as is the conservation of the supremacy of the Federal power in all matters entrusted to the nation by the Federal Constitution. In interpreting the Constitution it must never be forgotten that the nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved. Lane County v. Oregon, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise is inherent and has never been surrendered to the general government * * * This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limita- [fol. 219] tions upon the exercise of authority, federal and State, to the end that each may continue to discharge harmoniously with the other the duties entrusted to it by the Constitution."

As said in Ohio Oil Company v. Indiana, 177 U. S. 190, 211, 212: "In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but the regulation of real property and they must hence be treated as relating to the preservation and protection of rights of an essentially local character."

In the case of Kidd v. Pearson, 128 U. S. 1, the Supreme Court in discussing the extent of the authority of the Federal Government under the commerce clause, among other things said: "The line which separates the province of Federal authority or the regulation of commerce from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. The decisions in these cases, though they do not in a single instance assume to trace that line throughout its entire extent or to state any rule further than to locate the line in each particular case as it arises, have almost uniformly adhered to the fundamental principle which Chief Justice Marshall in the case of Gibbons v. Ogden, 9 Wheat 1, laid down as the nature and extent of the grant of power to Congress on this subject and also the limitations, expressed and implied, which it imposes upon State legislation with regard to taxation, to the control of domestic commerce and to all persons and things within its limits of purely internal concern * * * no distinction is more familiar to the common mind nor more clearly expressed in political literature than that between manufacture and commerce. [fol. 220] Manufacture is transformation, the fashioning of raw materials into a change of form for use; the functions are different; the buying and selling and the transportation incident thereto constitutes commerce and the regulation of commerce in a constitutional sense embraces the regulation at least of such transportation. Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in its terms navigation and the transportation and transit of persons and property as well as the purchase, sale and exchange of commodities. If it be held that the term includes the regulation of all such manufactures as were intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with a power to regulate not only manufacturers, but also agriculture, horticulture, stock-raising, domestic fishing, mining * * * in short, every branch of human industry. * * * It was said by Chief Justice Marshall 'that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulations against conflicting and discriminating State legislation.' "

The Supreme Court again in the case of County of Mobile v. Kimball, 102 U. S. 692, laid down the rule as to the constitutional limitations of Congress under the commerce clause in which it held that the power of Congress to regulate interstate commerce is unlimited, but that in regulating commerce between the State and foreign countries the regulations must be uniform and of one system or plan. The reason is obvious, being so that no discrimination would occur by reason of such legislation.

[fol. 221] In the case at bar the regulations sought to be enforced against the complainants apply only to the East Texas and the Oklahoma City oil fields, showing conclusively that they are not intended or meant to be regulations of commerce in a constitutional sense, but merely an attempt upon the part of the Federal government to limit the production of oil from these two fields, and to control the manufacture thereof, essentially matters of State regulation.

It may be argued that the purpose of these statutes as set forth in the declarations of emergency, and of policy by Congress are much broader than the commerce power of Congress and that these purposes of national rehabilitation are sought to be accomplished through a variety of effort of mutual and voluntary agreement which carry no penalties and also by a variety of mere money spending activities of the Federal government particularly in the aid of agriculture.

It is nevertheless true however, that in those provisions in which the government exhibits the heavy hand of authority to control or to compel a surrender of individual right and individual initiative in the fields of agriculture and of industries with pains and penalties, the statutes themselves in their very terms base the power to enforce upon the commerce clause. In this respect the intention of Congress has been made clear.

This conclusion finds support in the legislative history of this Act. Senator Wagner of New York, who was largely instrumental in the formulation and drafting of this legislation, said: "I have been discussing codes which are voluntary both as to their competitive practices and as to their labor provisions, and it is primarily upon such spontaneous action that the bill relies. It is not my intention to substitute government for business, or to remove from the [fol. 222] shoulders of business men the responsibility for economic recovery. The duties of industrialists are enhanced by the opportunities which the bill offers for constructive cooperation." Again, in the same address, he said: "The question of the proper exercise of Federal authority depends upon whether the bill confines itself to national matters or whether it attempts to extend to matters which are of purely local concern. The answer is clear. The language of the bill expressly provides that any compulsory measures such as the licensing feature of the bill, and any penalties for violation of the codes *shall be confined to business in or affecting interstate commerce. Thus no attempt is made to extend Federal action to an area of activity not covered by the commerce clause of the Constitution."*

Legislative intent is made plain when the statute, after making provision for the codes and providing that said codes shall be the standards of fair competition says: "Any violation of such standards *in any transaction in or affecting interstate or foreign commerce* shall be deemed an unfair method" etc. Section 3 (b).

It is a matter of common knowledge that the provisions of the codes do not stop with interstate commerce or with those trades or industries that are interstate in character. There is no pretense of such limitation. To bring such transactions within the constitutional regulatory power of Congress enforceable under penalty of the law, it is necessary to consider that Congress may under the power to regulate interstate and foreign commerce reach back into the states and control without limit the source of production and manufacturing processes, dictate the hours of labor, wages to be paid, the conditions of employment and the relation of employer and employee.

That such was not the intent of Congress except as it [fol. 223] related to interstate transactions in fact is thus made clear.

It being made clear from the evidence in this case that complainants have not subscribed to such code and are not engaged in interstate commerce, they are not subject to the pains and penalties provided by the Act for violation of such code, because they are clearly not engaged "in any transaction in or affecting interstate or foreign commerce."

To sustain a pretension to powers so vast and so unprecedented and so unheard of should certainly find its basis in the clearest expression of intent upon the part of Congress. Under the plain terms of the Act the expression of intent is to the contrary.

The power to regulate commerce between the states is without question one of the full, complete and plenary powers of Congress. As was said by the Supreme Court in the cases of Houston Texas Railroad v. United States, 234 U. S. 342, "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local government. The purpose was to make impossible the recurrence of the evils which had overwhelmed the confederation and to provide the necessary basis of national unity by insuring uniformity of regulation against the conflicting and discriminating state legislation. By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. Gibbons v. Ogden, 9 Wheat [fol. 224] 1, 196, 224; Brown v. Maryland, 12 Wheat 419, 446; County of Mobile v. Kimball, 102 U. S. 691, 696, 697; Smith v. Alabama, 124 U. S. 45, 473; Second Employers Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

It would neither be instructive nor profitable to undertake to review the numerous cases in which the Supreme Court has upheld the exercise of this power. It may simply be admitted that they go the full length in sustaining legislation by Congress in regulating local conditions or activities which have the effect of directly interfering with interstate commerce so as to be an obstruction or burden thereon.

In Board of Trade v. Olsen, 262 U. S. 1, where the Grain Futures Act was involved, it was held that "whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent.''

Here Congress has not declared any local activity or condition as constituting a burden upon interstate commerce. As is said in United States v. Ferger, 260 U. S. 199: ''It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such *unless they are regarded by Congress from the evidence before it as directly interfering with interstate commerce so as to be an obstruction or burden thereon.''*

[fol. 225] As was further said in the Olsen case: ''In the Act we are considering Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render imperative for the protection of such commerce and the national public interest therein.''

Here there is no such expression of judgment finding or will by Congress. There is not here shown any entry by Congress either directly or through its agency into the exclusive province of the State in dealing with intrastate activities except where those engaged in purely intrastate activities consent to the provisions of the code by subscribing thereto, which is not the case here.

There is not perceived in the terms of this Act any intention, express or implied, by Congress to invade the sphere of purely local action in aid of or to remove burdens or restrictions upon interstate commerce. In such connection it is interesting to note the observations of the present Chief Justice in an argument before the Federal Oil Conservation Board in 1926, when he was speaking in the capacity as counsel for his client, The American Petroleum Institute, and wherein he quotes the language of the Supreme Court as found in the Coronado case and the Oliver Mining Company v. Lord, supra to show that oil production is not commerce and then proceeds as follows:

"It may therefore be safely taken for granted that under the powers to regulate commerce Congress has no constitutional authority to control the mere production of petroleum on lands (other than Indian lands) within the territory of a State. All plans for requiring unit operation or otherwise, which involved the assertion of such a power on [fol. 226] the part of Congress do not require discussion. They proceed from an utterly erroneous conception of Federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government."

Further, he stated: "I am aware that it has been suggested that such Federal power to control production within the states might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare." (An argument made in this case in the brief of the Solicitor of the Department of Interior.) The Chief Justice continuing said: "Reference is sometimes made in support of this view to the words of the preamble of the Federal Constitution. But as Story says 'The preamble never can be resorted to to enlarge the powers confided to the general government or any of its departments. It cannot confer any power per se; it can never amount, by implication, to an enlargement of any power expressly given.' ". 1 Story on the Constitution, Sec. 462. And this statement was approved by the Supreme Court of the United States in Jacobsen v. Mass., 197 U. S. 11, 22.

"The suggestion to which I have referred is an echo of an attempt to construe Article I, Section 8, subdivision 1 of the Constitution of the United States, not as a power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States,' but as conferring upon Congress two distinct powers, to wit: (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that [fol. 227] it might think necessary or expedient for the common defense or the general welfare of the United States. Of course, under such a construction the government of the United States would at once cease to be one of enumerated powers and the powers of the states would be wholly illusory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907, 908; 1 Willoughby on the Constitution, sec. 22.) The government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the states respectively such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare.''

The government claims that under a declared emergency powers of Congress are expanded beyond their extent under ordinary circumstances and in ordinary times, and relies upon the cases of Highland v. Russell, 279 U. S. 253; Block v. Hirsh, 256 U. S. 135; Brown v. Feldman, 256 U. S. 170; Wilson v. New, 243 U. S. 332; Chastleton v. Sinclair, 264 U. S. 543.

In each of the above cases the action complained of was predicated upon an actual existing power of government and the emergency was only the occasion for bringing the power into exercise.

However, as has been very aptly said by the Supreme Court in the recent case of Home Building and Loan Association v. John H. Blaisdell & Wife, 290 U. S. 255, ''emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution [fol. 228] was adopted in a period of grave emergency. Its grants of power to the Federal government and its limitations of the powers of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been and always will be the subject of close examination under our constitutional system.''

''While emergency does not create power emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' '' Wilson v. New, 243 U. S. 348.

By Section 9 (c) the President ''is authorized to prohibit the transportation *in interstate and foreign commerce* of petroleum and the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable,'' etc.

By Section 10 (a) ''The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purpose of this title.''

Indulging as is indicated above, the violent presumption that Section 9 (c) is valid in the face of the complaint made against it to the effect that it is an abdication by Congress of its function of legislating and an unconditional delegation of authority to the President of its power to legislate, the inquiry arises as to the validity of the regu- [fol. 229] lations made pursuant to this provision. It might be said in passing that there cannot be perceived from this expression of Congress any expression of will or intent of its own, and that it prescribes no penalty for a violation of the Act, but that the penalty prescribed is for violation of any orders that the President might make under the Act and that it further provides that the President may terminate the same at any time he sees fit.

Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction that this provision of the Act is invalid by reason of its delegation to the Executive of legislative authority, yet conceding it for the purposes of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself. This is limited to the transportation in interstate and foreign commerce of petroleum and the products thereof, etc.

It has been repeatedly held that in order to subject one to inquisitions, visitations and interrogations by extrajudicial bodies for the purpose of obtaining information against them, statutory authority for such claim of right must be shown to plainly and definitely confer upon such bodies such authority. Overton Refining Company v. C. V. Terrel, et al., 459 in Equity in this court. Counselman v. Hitchcock, 142 U. S. 547. Interstate Commerce Commission v. Brimson, 154 U. S. 448. Harriman v. Interstate Commerce Commission, 211 U. S. 408.

As there is nothing contained in the statute authorizing the action complained of on the part of the respondents, it is clear that such regulations requiring such reports and the going upon the property of the complainants by the [fol. 230] respondents, gauging their tanks and digging up their pipelines are without authority of law.

But the respondents say that the regulations in question are: (1) reasonably necessary to carry out the purposes of the Act and (2) that they do not infringe upon constitutional rules, but there cannot be read into the Act any intention of Congress to invade the rights of the State to regulate matters of purely local concern and regulation such as the production of oil and the refined products thereof where they have no relation to and do not go into interstate commerce, and it is not competent for the Secretary of the Interior, however good his motives, to enlarge by regulation upon the provisions of the Act itself.

Since the Act in terms only authorizes the prohibition of the transportation in interstate and foreign commerce of petroleum and the products thereof; it certainly cannot be extended to cover by regulation those who are obviously not engaged in the transportation of such products in interstate or foreign commerce or engaged at all in interstate or foreign commerce.

The other provisions of Section 9 (c) relating to transportation in interstate commerce recognize the validity of State regulations and the action of the State regulatory body in fixing the amount of withdrawals and the amount to be produced. This in itself is a denial of any intention upon the part of Congress to grant to national officers the right to act in regard to the production of crude oil or the manufacture of its products.

Such action by officers of the National government is obviously an indirection and evasion contrary to the terms of the Act itself in an attempt to regulate and control the [fol. 231] production of oil and the manufacture of products therefrom, a matter committed solely to the discretion of the State.

As was said in Stafford v. Wallace, 258 U. S. 496, where the Act gave the Secretary of Agriculture a large measure of control over the stockyards of the country and which control extended to practically all the methods of doing business therein, even to the price to be charged for the services rendered in the stockyard. The Supreme Court said: "What there amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congres under the commerce clause. *And it is primarily for Congress to consider and decide the fact of the danger and meet it.* This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent." Here there has been not only no determination by Congress of a practice there threatens to obstruct or unduly to burden the freedom of interstate commerce except as it relates, if at all, to the transportation in interstate and foreign commerce of petroleum and its products. It has not considered and decided the fact of any other danger to or burden upon interstate commerce and the regulations of the Secretary of the Interior certainly cannot override and enlarge the determinations of Congress by mere regulation to the prejudice of the rights of the State over matters of purely local concern.

The case here is about the same as Stafford v. Wallace, if, under the facts of that case the Secretary of Agriculture had by regulation required that every domestic producer of livestock, engaged solely in intrastate commerce, give him information as to the kind and character, [fol. 232] description and age, color and sex of the livestock so raised, something which obviously had no relation to the matter of local practice or condition which Congress was attempting to affect by regulation: then the situation there and here would be fairly comparable. Such a requirement would have had no reasonable relation to the expressed will of Congress and so here. The regulations of the Secretary of the Interior have no reasonable or any relation to the will of Congress expressed in this Act. To admit of the authority of the Secretary of the Interior to make such regulations as those involved here is to go in the face of the terms of the Act itself. Such an invasion of the rights of the States is not permissible in our dual form of Government.

The facts of this case clearly and obviously disclose that the regulations seek by indirection to evade constitutional limitations by superseding State authority to which the power is clearly committed to regulate the local production of crude oil and to supervise the manufacture of products therefrom.

As said in Boyd v. United States, 116 U. S. 616: "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.

This can only be obviated by adhering to the rule that Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon. Their motto should be obsta principiis."

[fol. 233] As if apropos of the situation here presented, John F. Dillon, addressing himself to the constitutional provisions written for the protection of life, liberty and property, years ago said: "If there is any problem which can be said to be yet unsettled it is whether the bench of this country, State and Federal, is able to bear the great burden of supporting under all circumstances the fundamental law against popular or supposed popular demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary * * * unique in the history of the world * * * to support, maintain and give full effect to the Constitution against every act of the legislature or the Executive in violation of it. This is the great jewel of our liberties. We must not, 'like the base Judean, throw a pearl away richer than all his tribe.' This is the final breakwater against the haste and passions of the people. Against the tumultuous ocean of Democracy. It must at all costs be maintained." Dillon's Laws and Jurisprudence of England and America, page 214.

The above conclusions obviate the necessity of discussion of the other constitutional questions raised.

A decree may be presented in accordance herewith.

[File endorsement omitted.]

[fol. 234] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 235] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 236] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, PHIL E. BAER, Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

Motion of Appellants for Supersedeas and Stay

MOTION OF APPELLANTS FOR SUPERSEDEAS AND STAY AND AFFIDAVIT IN SUPPORT—Filed April 4th, 1934

To the Honorables the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Acting pursuant to the direction of the Solicitor General of the United States and the Department of Justice, come now the above named appellants, through their attorneys, Charles Fahy, Douglas Arant and Chas. I. Francis, and show unto your Honors that on the 21st day of February, 1934, the Honorable Randolph Bryant, Judge of the United States District Court for the Eastern District of Texas, entered a decree granting a permanent and perpetual in- [fol. 237] junction in a certain cause entitled Amazon Petroleum Corporation et al., plaintiffs, versus Archie D. Ryan et al., defendants, in Equity Cause No. 652 and Consolidated Causes 667, 505, 595, 621 and 665, then pending in said Court.

The District Court by its decree granted a permanent and perpetual injunction enjoining and restraining Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior of the United States, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil C. Baer, United States Marshal for the Eastern District of Texas, and each of them, their agents, deputies, representatives and employees, from enforcing or attempting to enforce against the complainants

Section 4, Article III of the Code of Fair Competition for the Petroleum Industry; from requiring from the complainants the reports required under Regulation IV of the Rules and Regulations issued and promulgated by the Secretary of the Interior under authority contained in Section 10 (a) of the National Industrial Recovery Act; from bringing any action, civil or criminal, against the complainants for alleged violations of the aforesaid Code and Regulations, and from going upon the property of the complainants by virtue of any authority conferred or attempted to be conferred by the aforesaid Code and Regulations. Appellants urge below and again urge here that the District Court erred by the reasons specifically set forth in the Assignment of Errors. Appellants, pursuant [fol. 238] to the direction from the Solicitor General of the United States and the Department of Justice, have taken appeal from said decree and permanent injunction and the same has been duly allowed by said District Judge.

On the 26th day of March, A. D. 1934, your Appellants petitioned the District Court in said cause for a supersedeas and stay of said decree and injunction pending disposition of this appeal; and the District Court denied said supersedeas and stay of the injunction.

Unless this Honorable Court grants a supersedeas in this cause and stays all proceedings under or by virtue of said order, there will be grave and irreparable injury and damage done to said appellants and to the producers of petroleum in the State of Texas and elsewhere throughout the United States, and to the Secretary of the Department of the Interior in his administration of Section 9 (c) of the National Industrial Recovery Act. The effect of the decree and the injunction will be to bring to a complete halt the Government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States, and a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States. One of the cornerstones of the present national program is in virtual suspension and the conservation of a natural resource essential to the national defense is seriously imperiled.

[fol. 239] The appellants further state that in their opinion the order of said District Court granting said permanent injunction should and will be reversed, or, at least, that it appears that there is reasonable doubt as to whether the order of said District Court should be sustained.

Wherefore, appellants pray this Honorable Court to enter an order of supersedeas, without bond, staying the permanent injunction granted by the decree entered in this cause on February 21, 1934, and commanding said District Court, its Judge, Clerks and Marshals to refrain from taking or suffering to be taken before them any further proceedings pursuant to or by virtue of, said decree granting said injunction herein, until the hearing and decision by this Court of the said appeal and the return of the mandate thereon; and ordering that good and sufficient service of such order of this Court shall be deemed made by lodging in the office of the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division thereof, a true copy of this motion and the order of the Court entered thereon; and for such further relief as to this Court may seem proper.

Charles Fahy, John F. Davis, Chas. I. Francis, Special Asst. to the Atty. Gen'l, Attorneys for Appellants, 617 Citizens Nat. Bank Bldg., Tyler, Texas.

[fol. 240] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. —

A. D. RYAN et al., Appellants,

vs.

PANAMA REFINING COMPANY et al., Appellees

No. —

ARCHIE D. RYAN et al., Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUPERSEDEAS AND STAY ORDERS

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Chas. I. Francis, known to me to be the identical person whose name is subscribed to this affidavit and who being by me duly sworn on oath deposes and says:

My name is Chas. I. Francis. I am Counsel of Record in the Panama and Amazon cases. I am an Assistant Solicitor in the Department of the Interior of the United States and a Special Assistant to the Attorney General [fol. 241] of the United States and in such capacity have been charged with the duty of enforcing, in the Eastern District of Texas, the Code of Fair Competition for the Petroleum Industry, Section 9 (c) of the National Industrial Recovery Act and the Regulations issued under Section 10 (a) thereof. I commenced this work on November 27, 1933, and am particularly familiar with conditions existing in the East Texas oil field and generally with conditions in the petroleum industry throughout the nation since that date.

Since the decrees of the United States District Judge Bryant in the Panama and Amazon cases have been entered, there has been a material increase in the production and transportation of illegally produced and refined petroleum—in my judgment amounting to approximately 100 per cent increase in the East Texas oil field alone. In my opinion, this increase is solely due to the effect of these decrees.

The present overproduction in this field is approximately seventy-five thousand barrels per day, as compared with approximately forty thousand barrels per day during the month of January, 1934.

This overproduction threatens the interstate market for petroleum and its products and menaces the Federal government's stabilization and conservation program under the National Industrial Recovery Act.

For the reasons stated in the appellants' motions and brief herein filed. I believe that a supersedeas and stay order should be entered by this Court. If such supersedeas [fol. 242] and stay orders be entered, the Appellants will diligently prosecute such appeals.

Chas. I. Francis, Special Assistant to the Attorney General.

Subscribed and sworn to before me this the 31st day of March, A. D. 1934. Mrs. H. I. Griffies, Notary Public, Smith County, Texas. My commission expires June 1, 1935. (Seal of Notary Public, County of Smith, Texas.)

[fol. 243] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, PHIL E. BAER, Appellants,

v.

AMAZON PETROLEUM CORPORATION et al., Appellees

Response to Motion of Appellants for Supersedeas and Stay

RESPONSE OF APPELLEES TO MOTION FOR SUPERSEDEAS AND STAY—Filed April 4th, 1934

To the Honorable the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Your respondents would respectfully show that it is not true that unless this Honorable Court grants a supersedeas in this cause and stays all proceedings there will be grave and irreparable injury and damages to the appellants, and to the producers of petroleum in the State of Texas and elsewhere throughout the United States; that it is not true that grave and irreparable injury and damage will be done to the Secretary of the Department of Interior in his administration of Section 9-C of the National Industrial Recovery Act; that it is not true that the effect of the decree and injunction will be to bring to a complete halt the government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States; or that it will result in a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States; [fol. 244] that it is not true that the effect of said decision is to virtually suspend the present national program for the conservation of the natural resources essential to the National Defense.

II

Your respondents would further respectfully show to the court that it is not probable that the permanent injunction granted by the District Court will be reversed, or that there is any reasonable doubt that said order will be sustained, because it appears from the court's findings of fact and conclusions of law that the appellants were acting wholly without authorization of law in that they were attempting to regulate and restrict the production of petroleum from the wells of the appellees under the guise of regulating interstate commerce, whereas the appellees were not engaged in interstate commerce, and the business of the appellees as conducted by them does not affect interstate commerce, except incidentally and remotely.

III

Your respondents would further respectfully show to the court that the appellants would suffer no loss or damage whatever by reason of the order of the District Court not being stayed, because the orders of the Railroad Commission of Texas were held valid, and these appellees under and by virtue of the decision of the court upholding said orders are now operating their properties in strict conformity with the orders of the Railroad Commission of Texas. The appellees are not engaged in either buying, selling, shipping or transporting petroleum in interstate commerce, but on the other hand are engaged exclusively in the producing of oil which is sold by them at the stock tanks on the leases near the wells where it is produced, and title passes from the appellees upon delivery to purchasers at the stock tanks. Therefore, the injunction of the District [fol. 245] Court in no way interferes with the government in the administration of the National Industrial Recovery Act which prohibits the shipment of oil produced in excess of the orders of the Railroad Commission in interstate commerce.

IV

Respondents would further respectfully show to the court that by reason of the fact that they are compelled by the statutes of the State of Texas to comply with the orders of the Railroad Commission of Texas, and are not permitted to produce in excess of the allowable fixed by the Railroad Commission of Texas, a stay of the order of the District Court would accomplish nothing.

V

Respondents would further respectfully show to the court that under the findings of the District Court the appellants, without authority of law, were, under the guise of regulating interstate commerce, attempting to regulate and restrict the production from appellees' wells, which would and did result in irreparable loss and damage to the appellees, for which they have no adequate remedy at law, and that unless an injunction was granted the appellants would without authority of law, institute and prosecute penalty suits against the appellees, and would cause the appellees to be subjected to criminal prosecution for alleged violations of the so-called Code of Fair Competition, all of which would result in irreparable loss and damage to the appellees. Therefore, if the motion of the appellants for a stay is granted, these appellees, as found by the District Court, will be subjected to prosecutions both civilly and criminally, regardless of whether or not they continue to comply with the orders of the Railroad Commission of Texas.

[fol. 246] Wherefore, appellees respectfully pray that the motion of the appellants be denied; for costs, and general relief.

Saye, Smead & Saye, for Appellees.

[fol. 247] No. 7350

Archie D. Ryan, S. D. Bennett and Phil E. Baer

versus

Amazon Petroleum Corporation et al.

Order Staying Decree Pending Appeal

Extract from the Minutes of April 4th, 1934

Upon application of appellants, it is ordered that pending the appeal herein the decree of the district court, insofar as it enjoins inspections and the furnishing of reports of oil produced as required by the provisions of law and regulations complained of, be and the same hereby is stayed.

[fol. 248] No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER

versus

AMAZON PETROLEUM CORPORATION et al.

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 2nd, 1934

On this day this cause was called, and, after argument by Douglas Arant, Esq., Special Assistant to the Attorney General, and Chas. I. Francis, Esq., Special Assistant to the Attorney General, for appellants, and F. W. Fischer, Esq., and J. N. Saye, Esq., for appellees, was submitted to the Court.

[fol. 249] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

Filed May 22nd, 1934

Before Bryan, Foster and Sibley, Circuit Judges

SIBLEY, Circuit Judge:

The Amazon Petroleum Corporation, with other producers of petroleum in the East Texas field, brought a bill to enjoin the Railroad Commission of Texas and other officers of the State from enforcing orders of the Commission which greatly restricted the production of oil; and at the same time to enjoin Ryan, an agent of the Department of the Interior of the United States, and the United States [fol. 250] District Attorney and the Marshal from enforcing certain portions of the National Industrial Recovery Act and of the Regulations and Code for the Petroleum Industry promulgated thereunder. A court of three judges having severed the two causes of action and taken jurisdiction of that to enjoin the orders of the Railroad Commission, upheld those orders. Amazon Corporation vs. Railroad Commission, 5 Fed. Sup. 633. The cause of action against the federal officers was tried by the District Judge and a final decree rendered by which the defendants were perpetually enjoined from enforcing Section 4 of Article III of the Petroleum Code and Regulation IV, and from going on the property of the complainants by virtue of them, and from instituting civil actions or criminal prosecutions for violation of them. 5 Fed. Sup. 639. This decree is now under review by appeal.

Article III of the Petroleum Code is entitled Production. Section 1 relates to limiting imports of petroleum and its products. Section 2 relates to withdrawals from storage. Section 3 provides for a Federal Agency designated by the President to make estimates of required domestic production and under approval of the President to allocate it equitably among the states. Sec. 4 reads: "The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate [illegible] said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in [fol. 251] which event it is hereby agreed that such quotas shall become operating schedules for that State. If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code." The attacked Regulation IV was made by the Secretary of the Interior by virtue of the delegation to him of the Presidential power by an Executive Order of July 14, 1933. In substance the Regulation requires every producer of petroleum to file with the Department of the Interior each month a sworn statement of the allowable production fixed by the State Agency for each of his properties and wells, the daily production from each and the place of storage, and a declaration that none of the petroleum produced or shipped was in excess of the amount permitted by the state. Regulation VII requires that adequate books and records of all transactions in production and transportation of petroleum be kept and maintained available to inspection by the Department of the Interior. No provision is called to our attention which specifically authorizes the inspection of oil properties and storage tanks. The evidence is without substantial conflict, and shows that the complainants are only producers of crude petroleum, neither selling it for delivery in other states or countries nor transporting it thither, but disposing of it on their properties in Texas. The Texas Railroad Commission has adopted the allocation for the state made under Petroleum Code, Article III, Section 3, and its orders have reduced the allowable production of complainants' wells to a small percentage of their capacity. The defendants are demanding the reports required by Regulation IV, are inspecting the books and the properties of the complainants and gauging their storage tanks, and threaten and intend to prosecute them for vio- [fol. 252] lation of the Regulations and Code. Some of the complainants have in fact been producing and disposing of petroleum in excess of that allowable. The East Texas oil field is the largest in the country and capable alone of producing the petroleum marketable in the United States. It has most of the flowing wells from which oil is most cheaply produced. Production in excess of market demand greatly affects the market price, which has often fallen below the cost of production even in Texas, and sometimes as low as ten cents per barrel at the well. Eighty-five per cent of the oil produced in Texas and its products is transported into other states, and greatly affects the oil business in all states. Eighteen other states produce petroleum also, of which California and Oklahoma are capable of producing amounts comparable with those producible in Texas, but in other states the wells are less bountiful and more costly in operation, but yield a very large aggregate production and represent a huge investment. Petroleum is an exhaustible national resource, very necessary in the arts of peace and war, of importance to all parts of the country and incapable of satisfactory substitution. Its production is a major industry and its distribution is necessarily carried on largely in interstate and foreign commerce since over half of the states produce none. It is peculiar in its transportation and handling, because this is most largely done by means of pipe lines in which the oil of many producers is often indistinguishably mingled on the way to a refinery, to storage tanks, or in transportation to other states and countries. In the oil fields these pipe lines are a complicated and connected system, often underground, with unobservable ramifications. Sometimes by-passes are employed to run oil secretly around the place for its measurement by the mere opening of a valve. By these means and others oil in excess of what is allowable is produced and shipped in interstate [fol. 253] commerce in large quantities, not only defeating the attempted restrictions but demoralizing the general markets and often cheating those who have royalty interests in what is produced. If the transportation of excess oil in interstate commerce is to be successfully controlled, the system of reports and records required and the inspections practiced are both reasonable and necessary.

The main contentions made by appellants or by appellees are: 1. That the Secretary of the Interior is an indispensable party to the attack on his Regulations. 2. That the production of oil cannot be regulated by Congress and the provisions of the Act and of the Regulations and of the Code dealing with it are unconstitutional. 3. That the Regulations and the Code exceed the authority given by the Act. 4. That if Congress could itself have made the attacked provisions it could not delegate to the President and he could not delegate to others the power to make them. 5. That the reports and inspections are searches and compulsions to self-incrimination forbidden by the Constitution.

1. The Secretary of the Interior is not personally doing or threatening the acts of trespass and of prosecution which are sought to be enjoined. Although the actors may be authorized and incited by him so that he would be a proper co-defendant if he were within the court's reach,

the court has power to stop the trespassing by those within its jurisdiction irrespective of their claim that they are acting for others. Osborne vs. Bank of United States, 9 Wheat. 738; State of Colorado vs. Toll, Supt., 268 U. S. 228. This is not a bill to cancel the Secretary's Regulations, but only to test their efficacy to protect defendants in their alleged trespasses against complainants' rights. There is no more need to make the Secretary a party for this purpose than to make the President a party because he promulgated the Code or the Congress because it enacted the statute.

[fol. 254] 2. The National Industrial Recovery Act, Section 303, provides: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby." We are therefore called on to deal only with those provisions of the Act directly involved in this case, and with their application to the circumstances here appearing. A more general discussion of the Act is both unnecessary and inappropriate. Section 9 is devoted to oil regulation. Paragraph (c) reads: "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, committee, officer or other duly authorized agency of a state. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by a fine of not to exceed $1,000 or imprisonment for not to exceed six months, or both." The prohibition thus authorized was made by the President on July 11, 1933. On its face it is a regulation of transportation in interstate and foreign commerce, and within that familiar power of Congress. But because it is expressly based on and is designed to aid a restriction on production or withdrawal from storage made by valid state law or regulation it is said to be in reality a regulation of production within the state, which is not interstate or foreign commerce. Oil production is either mining or manufacture. Neither the one nor the other is ordinarily within the power of Congress to regulate within a state.

Kidd vs. Pearson, 128 U. S. 1; Hammer vs. Dagenhart, 247 U. S. 251; United Mineworkers vs. Coronado Coal Co., 259 U. S. 345; Oliver Iron Mining Co. vs. Lord, 262 U. S. 172; [fol. 255] Champlain Refining Co. vs. Corporation Commission, 286 U. S. 210; Utah Power & Light Co. vs. Pfost, 286 U. S. 165. It may be that under peculiar circumstances, such for example as are here shown to exist in the relation of oil production in Texas to commerce in oil with and among the other states, such a burden on or interference with intertsate commerce may exist as to justify Congressional action, as in the case of intrastate rates which injuriously affect interstate commerce, Houston, E. & W. T. R. R. Co. vs. United States, 234 U. S. 342; Wisconsin R. R. Commission vs. C. B. & R. R. R. Co., 257 U. S. 563; Florida vs. United States, 282 U. S. 194; or local stockyard practices, Stafford vs. Wallace, 258 U. S. 495, or selling of grain on the exchanges. Chicago Board of Trade vs. Olsen, 262 U. S. 1. Such a question may arise under the provisions of the Petroleum Code, Article III, Section 4, relating to the fixing of production quotas, but in the provision of the Act now before us there is no such question. The regulation of production is assumed to have been validly made by the state, and the federal regulation is actually only of interstate and foreign commerce, adjusted to aid and not to thwart the state action. Such cooperation between state and central government is not Constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate. Thus when some of the states in the exercise [fol. 256] of their general police power sought to control the transportation and sale of intoxicating liquors within their borders, Congress with a plain purpose to make the state regulation more effective first made such liquors subject to state laws on arrival, and later forbade them to be transported in interstate commerce into such a state. In Re Rahrer, 140 U. S. 545; Clark Distillery Co. vs. Western Maryland R. R. Co., 242 U. S. 311. So the states in the exercise of their police power regulate the stealing of automobiles, but Congress supplementarily forbids and punishes the interstate transportation of stolen cars. Brooks vs. United States, 267 U. S. 432. The Lottery Act supplements in the federal domain a police power indubitably residing in the states. Champion vs. Ames, 188 U. S. 321. Other instances might be cited. The provision of the National Industrial Recovery Act under discussion is not unconstitutional because it operates and was intended to operate so as to make more effectual valid state action with reference to oil production.

Nor is it unconstitutional because its effect is temporarily to restrict the volume of interstate and foreign commerce in oil. No doubt in general there should be free trade among the states, but that is not to say that laissez faire must have full scope. The power to regulate interstate commerce is given to Congress in identical terms with the power to regulate foreign commerce. The regulation of foreign commerce for the good of the whole country by severe restrictions on immigration, and by protective tariffs on goods, and by embargoes, is a part of our history and maye be independent of any inherent objectionableness in the persons or the articles affected. A similar power, with some special restrictions, exists as to interstate commerce and may be exercised not only to exclude harmful articles but to better the health and stability of such commerce as a whole. Regulation by prohibition was [fol. 257] upheld in the cases above cited. What a centralized constitutional government may do in the way of regulation of trade or commerce our dual system can accomplish by the cooperation of its state and central governments.

The contention is also made that the effect of Sect. 9(c) of the statute is to take property without due process of law. Of course regulations of commerce, whether by state or central government, must not offend other provisions of their respective constitutions. But by hypothesis of the statute the regulation by the state must be a valid one. Validity has been adjudicated in this case. The prohibitions on this point of the state constitution and of the Fourteenth Amendment with reference to the state are so similar to the prohibition of the Fifth Amendment as to the central government that if the state regulation be valid the assisting federal statute cannot well offend at this point.

3. The Act, Sect. 10(a), authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and provides punishment for their breach. Regulations IV and VII providing for monthly statements and for books and records subject to inspection are clearly shown to be necessary in order to render effectual the prohibition of the statute against shipping excess petroleum in interstate and foreign commerce. Excess oil cannot be distinguished after it is mingled with other oil either in the storage tank, the pipe line or the tank car. If it is produced it can be traced into interstate commerce only by producers' reports and such inspections as are provided for. The fact that the producers themselves do no- engage in interstate commerce does not render it less necessary that they furnish information. Those who buy from them probably could not tell whether what they bought and were about to ship was or [fol. 258] was not excess oil. The inspection of books is only a check on the truthfulness of the reports. The attacked regulations are supported as reasonably necessary to the purposes of the Act.

The Code provision, Art. III, §4, adopted under Sect. 3 of the Act, goes further than the provisions of Sect. 9(c) heretofore considered because it deals directly with production. These complainants have not consented to the Code and are bound by it only if it has the force of law. The Code provides for an ascertainment by a Federal Agency of the required domestic production of crude oil and its products, and for its equitable allocation among the several states by Presidential approval; and if the allocation is not regarded by the state agencies by making a subdivision of it among the pools, leases and wells, within the state so that an excess production results, the President may either regulate shipments out of the state so as to equalize such shipments or may himself make and recommend to the state agencies such quotas, which shall then become operating schedules for that state. Production by any person in excess of the quota assigned to him is declared an unfair trade practice and in violation of the

Code. Since production of excess oil and not its shipment in interstate or foreign commerce thus constitutes violation of the Code, it is said that the commerce power of Congress is exceeded. In this case the State of Texas has fixed its own quotas, so that federal power to fix them is not involved. We do not inquire whether the production of crude oil intended for shipment in interstate or foreign commerce constitutes such a threat to do that act or such a temptation to it as to be capable of restraint in order to make effectual the prohibition of shipments in such commerce, in the manner in which the possession of intoxicating liquors was held to be regulable by Congress although the sale and transportation only of them was within [fol. 259] Congressional power. For by reference to Sect. 5 of the Act it appears that the sanctions for violating the Code are but three. Paragraph (b) declares a violation to be an unfair method of competition within the meaning of the Federal Trade Commission Act. If that sanction be an unlawful one, and should be sought to be applied against complainants before the Federal Trade Commission, they have their remedy in that proceeding. Paragraph (c) provides for injunction proceedings by the District Attorney to prevent violation, and a complete remedy against wrong is available there. Paragraph (f) provides a sanction by criminal prosecution, but only when the violation is "in any transaction in or affecting interstate or foreign commerce." An indictment or information could not stop at alleging the production of excess oil, but would have to allege with appropriate fulness that it was in a transaction in interstate commerce or affecting it. This sanction is thus tied to and seemingly not intended to exceed the commerce power of Congress. Each such criminal case would depend on its own facts. The provision of the Code thus enforced does not appear to be unconstitutional. Whether any complainant at any time has violated it is more appropriately to be tried in a prosecution of him than in this composite suit in equity. We may say of all three sanctions that an adequate remedy against abuse is afforded in the proceedings indicated by the statute for their respective enforcement, so that a remedy in equity by injunction may not be had.

4. The delegation to the President of power to put the prohibition of Sect. 9(c) into effect is not seriously at-

tacked. Such a thing has been often done under varying forms of language, as appears by the review of statutes in Field vs. Clark, 143 U. S. 649. See also Hampton vs. United States, 276 U. S. 394. But the regulations promulgated by the Secretary of the Interior and the Code approved by the President are strongly attacked as an [fol. 260] improper delegation of legislative power. We have shown the regulations in question to be reasonable and within the Act if made by the President. The Act in Sect. 2(b) expressly authorized the President to appoint someone else to exercise any function or power given him, and he appointed the Secretary to exercise this function. It is the case of a legislative agent authorized to appoint a subagent. Congress, well knowing that the President could not personally do all that was put on him, authorized him to select someone to attend to the business instead of itself appointing such a one. We know of nothing to forbid it. The regulations made by the Secretary stand as though Congress had directly authorized him to make them.

The Code is a novelty in legislation. Its making was not a delegation by Congress of a power of legislation to the various trade or industrial groups mentioned in Sect. 3[*1]. The groups could really do nothing but advise the President, just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that gives it force. Congress puts sanctions behind either which are intended to make it enforceable law. Whether the general purposes of the Act stated in Sect. 1, together with the requisites of a Code set out in Sect. 3 or elsewhere are statements of an intelligible legislative plan sufficient to be [fol. 261] filled out and executed by a commission after hearing those to be affected, as for instance when a legislature orders just and reasonable rates to be established on railroads and authorizes a commission to enquire into and fix them, is a question we need not broadly answer.*[2] The particular policy and plan disclosed in Sect. 9 to regulate excess oil by debarring it from interstate commerce is entirely clear. The regulations and Code provisions which are here in issue do not go beyond that purpose and plan.

[*1] Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislative power. St. Louis & Iron Mountain R. R. Co. vs. Taylor, 210 U. S. 281. By R. S. § 2324 Congress in providing for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. Erhart vs. Boaro, 113 U. S. 527; Butte City Water Co. v. Baker, 196 U. S. 119.

5. The regulations touching reports and inspection of records are not in violation of the prohibition of the Fourth [fol. 262] Amendment forbidding unreasonable searches or of the Fifth Amendment guaranteeing that no person shall be compelled in any criminal case to be a witness against himself. A producer of oil does not operate under any right or license derived from the federal government and is not subject to such rigorous treatment as if he did. But he is a citizen within the protection of that govern-

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*[2] While Congress cannot abdicate legislative power, it may make large delegations of it, always retaining the right of control and of reassumption. While the Constitution was being written the then Congress on July 13, 1787, made the Ordinance for the Government of the Northwest Territory, in which very broad legislative powers were delegated. Similar delegation occurred when the Louisiana Territory was purchased. Sere vs. Titot, 6 Cranch. at page 337. Legislative power appropriate for a municipality was delegated with reference to the District of Columbia. Stoutenberg vs. Hennick, 129 U. S. 141. Governments with legislative powers have been established by Congress for other territories and insular possessions. See United States vs. Heinszen, 206 U. S. at page 385. Broad powers given the Secretary of Agriculture to make regulations touching forest reserves, whose breach was criminally punishable, were upheld in United States vs. Grimaud, 220 U. S. 506. In all these cases matters within the states were not directly affected. Such matters ought no doubt to be kept more di-

ment and owes it a citizen's duty to assist in the enforcement of its laws. The object of the reports and the inspection of books is to ascertain the existence and the disposition of excess oil in order that its interstate and foreign transportation may be stopped. The government has a right to know about this, just as it has a right to know what the citizen's income is that it may be taxed. Presumably no crime has been committed by producer or taxpayer. No criminal case is pending, and the immediate purpose is information and not prosecution. The fact that the report is required greatly tends to keep producer or taxpayer from committing a crime that would be disclosed thereby. But if he has committed a crime and is entitled to withhold evidence of it, he should at the proper time and on the specific ground that disclosure would tend to criminate him, assert the right to withhold the particular evidence. Because such a thing conceivably might occur is no reason to upset laws and regulations which are generally useful and necessary in the public business.

The inspection of properties and tanks and pipe lines does not seem to be expressly authorized by any regulation. It may be a civil trespass when not consented to, even though it is not a search in the constitutional sense

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rectly in Congressional control; but even so, practical necessity has required of Congress more and more to act through agents in fixing legislative details. The Interstate Commerce Commission is an outstanding example. One of its broadest discretionary powers in reference to the long and short haul clause was upheld as validly delegated in United States vs. Atchison, T. & S. F. R. R. Co., 234 U. S. 476. The Secretary of War is validly empowered to require alteration or removal of bridges which unreasonably obstruct navigable waters. Union Bridge Co. vs. United States, 204 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177. The Federal Reserve Board was validly authorized to empower individual National Banks to act as trust companies. First National Bank Bay City vs. Fellows, 244 U. S. 416. The delegation to the President of power to alter tariffs within limits and for purposes disclosed was held not unconstitutional in Hampton vs. United States, 276 U. S. 394. We have discovered no delegation which Congress has plainly made that has been refused recognition by the Supreme Court.

when the premises are open to free entry. See Hester vs. United States, 265 U. S. 57; United States vs. Western & Atlantic Railroad, 297 Fed. 482. But if a trespass, there is no showing of irreparable damage or insolvency of the [fol. 263] trespassers, and no occasion for an injunction on that account.

We are of opinion that the injunction ought not to have been granted, and the decree is reversed and the cause remanded with direction to dismiss the bill.

[fol. 264] No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER,

versus

AMAZON PETROLEUM CORPORATION et al.

JUDGMENT

Extract from the Minutes of May 22nd, 1934

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction to dismiss the bill.

[fol. 271] No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER,

versus

AMAZON PETROLEUM CORPORATION et al.

ORDER DENYING REHEARING

Extract from the Minutes of June 29th, 1934

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 272] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Application of Appellees for Stay of Mandate

APPLICATION FOR STAY OF MANDATE—Filed July 5th, 1934

Come now the appellees in the above entitled and numbered cause, and would show to the court that they will immediately, and as soon as the clerk of this court can prepare a transcript of the proceedings in this cause, apply to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered herein by this honorable court, wherein it reversed the judgment of the district court and vacated and set aside the injunction granted by the district court in favor of appellees and against appellants and ordered a dismissal of appellees' bills of complaint.

[fol. 273] Appellees would further show that while this cause was pending before this honorable court and before its determination thereof, this court entered an order staying the injunction granted appellees by the district court, in so far as it enjoined inspection and the furnishing of reports of oil produced and refined, as required by the provisions of the law and regulations complained of. Therefore, the only portion of the decree of the district court that has not already been stayed by this court is that part wherein appellants are enjoined from proceeding with the criminal prosecutions already instituted against appellees, and from instituting additional criminal prosecutions against appellees because of their failure to comply with the regulations that are attacked in this suit.

Appellees would further show to the court that there is now pending before the Supreme Court of the United States in the cause of United States of America, appellant, vs. J. W. Smith, et al., appellees, and numbered 869 on the docket of said court, the question of whether one may be subjected to criminal prosecution for failure to comply with the identical regulations that are attacked in this suit; and the determination by the Supreme Court of the United States of that question in said cause will be determinative of the question as to whether the appellees in this case may be subjected to criminal prosecution for failure to comply with the regulations attacked herein.

Appellees would further show to the court that they believe that if the mandate of this court, vacating the injunction of the district court, is not stayed, the appellants will [fol. 274] immediately proceed with said criminal prosecutions, as well as institute other criminal prosecutions because of the failure of appellees to comply with the attacked regulations before and after the granting of the injunction against them in the trial court, notwithstanding the question of the appellees' criminal liability for failure to comply with said regulations is now pending before the Supreme Court of the United States and set for submission in October, 1934.

Wherefore, because of the premises, appellees pray that this honorable court stay its mandate for such time as will enable the appellees to apply to the Supreme Court of the United States for a writ of certiorari to review the judgment of this court, and if appellees file such application with the clerk of said court within such time, then that said mandate be stayed until this cause is determined by said court.

Respectfully submitted, W. T. Saye, J. M. Saye, W. Edward Lee, Longview, Texas; F. W. Fischer, Tyler, Texas; (Signed) F. W. Fischer, Attorneys for Appellees.

[fol. 275] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

ORDER STAYING MANDATE—Filed July 18th, 1934

On consideration of the application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 18th day of July, 1934.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 276] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 235 to 275 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7350, wherein Archie D. Ryan, S. D. Bennett and Phil E. Baer are appellants, and Amazon Petroleum Corporation, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 234 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 18th day of July, A. D. 1934.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 277] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,888. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 260. Amazon Petroleum Corporation, Barney Cockburn, E. J. Boase, et al., Petitioners, vs. Archie D. Ryan, S. D. Bennett and Phil E. Baer. Petition for a writ of certiorari and exhibit thereto. Filed August 6, 1934. File No. 260, O. T., 1934.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL.,
Petitioners,

vs.

A. D. RYAN, S. D. BENNETT, AND J. HOWARD MARSHALL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

✓ F. W. FISCHER,
Tyler, Texas,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL.,
Petitioners,

vs.

A. D. RYAN, S. D. BENNETT, AND J. HOWARD MARSHALL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petition of the Pamana Refining Company and others respectfully shows to this Honorable Court:

A.

Statement of the Matter Involved.

This is a suit by the Panama Refining Company, a refiner of crude petroleum, and A. F. Anding, a producer of crude petroleum, both of whom are residents of the Eastern District of Texas, in which they attack the validity of Subsection 9 (c), Title I, of the National Industrial Recovery Act (Public No. 67), and Regulations 4, 5, and 7 promulgated by Harold L. Ickes, Secretary of the Interior, under the purported authority of said Act. This subsection of the Act is quoted in petitioners' amended bill of complaint (R. 4), and the regulations complained of are attached to the bill of complaint (R. 16, 17, 22). Respondents had threatened petitioners with criminal prosecution for failure to comply with said regulations, and, as shown by the amended bill of complaint (R. 9), they had actually instituted criminal prosecutions against petitioners between the filing of the original bill of complaint and the amended bill of complaint. In addition to the claimed right to prosecute petitioners for failure to comply with the regulations while they were attacking the validity of the same, respondents also asserted the right to, and did, go upon petitioners' property and gauge their tanks and dig up their pipe lines and other equipment under the claimed authority to make inspections.

Upon the trial of the case upon its merits, the court found as a fact that petitioners were not engaged in interstate commerce, except that portion of gasoline that the refining petitioners sold and shipped in that commerce; that respondents had continually, over the objections of petitioners, entered upon their property, gauged their tanks, examined their books, dug up their pipe lines, and destroyed their property. That respondents have threatened and are attempting to enforce against petitioners criminal prosecutions by reason of petitioners' failure to file reports prescribed by Regulations 4 and 5, and submit their books and records for inspection as provided by Regulation 7. The court concluded, as a matter of law, that the complained of regulations were not authorized and not enforceable against petitioners, neither did respondents have the right to go upon petitioners' property over their objections and gauge their tanks and inspect their property and books (R. 164-168); and, accordingly, a decree was entered permanently enjoining respondents from enforcing any rule or regulation promulgated under the National Industrial Recovery Act, in so far as the same applies to the production of oil or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce, and from going upon or about the premises of petitioners or molesting them in the conduct of their business, and from prosecuting them for failure to comply with the attacked regulations (R. 161).

An appeal was prosecuted from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, which court, on May 22, 1934, reversed the decree of the district court and directed that the bill of complaint be dismissed (R. 235). Petitioners, on June 7, 1934, filed their application for stay of the mandate of the Circuit Court (R. 235-237), which application was on the same date granted (R. 237), provided petitioners file with the clerk of this Court their petition for certiorari and obtain service of notice thereof on opposing counsel within thirty days. A certified copy of the proceedings in the Circuit Court of Appeals, as well as eleven copies of the transcript of the record upon which this case was heard in said court, are attached to and accompany this petition.

By way of explanation, this case, with the others consolidated therewith, as shown by the record, was tried by the district judge separately from that of the Amazon Petroleum Corporation *et al.* *against* the Railroad Commission of Texas *et al.*, which is also a case against the respondents in this case and raises the same issues as are raised in this case, but the Railroad Commission of Texas was included as an additional defendant in that case. Therefore, the opinion in this case (R. 186) is applicable to both cases.

Likewise, the opinion of the Circuit Court (R. 222-223) is applicable and determines the issues involved in each of the cases. However, the *Amazon* case is still pending before the Circuit Court on a motion for rehearing.

B.

Reasons Relied on for the Allowance of the Writ.

I.

The United States Circuit Court of Appeals has, in this case, decided an important question of Federal law which has not been, but should be, settled by this Court.

II.

The United States Circuit Court of Appeals has erroneously held:

(a) That Subsection 9(c) of the National Industrial Recovery Act is a valid act of Congress.

(b) That Harold L. Ickes, designated by the President to enforce Subsection 9(c), is authorized by the provisions of the National Industrial Recovery Act to promulgate and enforce against petitioners the attacked regulations.

(c) That the effect of the opinion and holding of the United States Circuit Court of Appeals is, that while the President, or his appointee, is granted by Congress only general authority to make rules and regulations that may be necessary for the carrying out of the purposes of the National Industrial Recovery Act, yet the said Harold L. Ickes, as the appointee of the President, has, under that general grant of authority, the power to enforce against petitioners the attacked regulations, although the petitioners are not included within the terms of the act of Congress, and the things required of them by the regulations are not required by the act of Congress, and may subject petitioners to criminal prosecutions for failure to comply with said regulations.

(d) That the petitioners are not entitled in this suit to restrain respondents from proceeding criminally against them for failure to comply with the regulations while they are attacking the same, but are relegated for their remedy to the presentation of their legal defenses as each criminal case is tried.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 7351, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, Appellants, *vs.* Panama Refining Company *et al.*, Appellees, and that the said decree of the United States Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

PANAMA REFINING COMPANY ET AL.,
By F. W. FISCHER,
Tyler, Texas,
Counsel for Petitioners.

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CHARLES ELMORE C
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION, A CORPORATION; BARNEY COCKBURN, E. J. BOASE, ET AL.,

Petitioners,

v.

ARCHIE D. RYAN, S. D. BENNETT, AND PHIL E. BAER.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

✓ F. W. FISCHER,
Tyler, Texas,
W. EDWARD LEE,
J. N. SAYE,
W. T. SAYE,
Longview, Texas,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION, A CORPORATION; BARNEY COCKBURN, E. J. BOASE, CHARLES M. COPE, AND W. C. TURNBOW PETROLEUM CORPORATION, A CORPORATION; TRANS-STATE CORPORATION, A CORPORATION; A. H. TARVER, PELICAN NATURAL GAS COMPANY, A CORPORATION; DIMHAM OIL CORPORATION, A CORPORATION; ORIENTAL OIL COMPANY, A CORPORATION; K. E. MERREN, CANICO OIL COMPANY, A CORPORATION; ADCO OIL COMPANY, A CORPORATION; LACO PRODUCTION COMPANY, A CORPORATION; LEXENA OIL CORPORATION, A CORPORATION; E. J. MORAN, ORTIZ OIL COMPANY, INC., A CORPORATION; DEERE CREEK OIL COMPANY, A CORPORATION; A. F. ANDING, SOUTHPORT PETROLEUM COMPANY, A CORPORATION; IRON-ROCK OIL CORPORATION, A CORPORATION; INDEPENDENT PRODUCERS, A CORPORATION; W. HOLLOWAY, IMPERATOR OIL CORPORATION, A CORPORATION; OVERTON REFINING COMPANY, A CORPORATION; KILGORE REFINING COMPANY, A CORPORATION; K. W. P. WITT, O. L. HASTINGS, A. N. LANDES, W. M. McVEY, T. W. OWEN, J. CURTIS SANFORD, ROY HOWELL, YANDELL ROGERS, E. J. BARTELS, W. H. WILSON, T. J. WHITESIDES, GEORGE F. THAGGARD, ARROW REFINING &

PRODUCING COMPANY, a Corporation; DOUBLE L OIL COMPANY, a Corporation; P. D. BOLEN, CARL DUNHAM, J. M. LAPIN, G. A. FRANKLIN, R. S. HARPER, M. E. TRAPP and McMURREY CORPORATION, a Corporation; COFFMAN PRODUCTION COMPANY, a Corporation, and CEMO PRODUCTION COMPANY, a Corporation,

Petitioners,

v.

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER.

PETITION FOR WRIT OF CERTIORARI.

May it please the Court:

The petition of Amazon Petroleum Corporation and the other petitioners above named respectfully shows to this Honorable Court:

A.

Statement of the Matter Involved.

The petitioners are oil producers. They own and operate separate oil producing properties in the East Texas oil field. The oil is flowed from the wells into tanks on the property, gauged and delivered from the tanks into the pipe lines of the purchasers. Title passes to the purchaser on delivery.

Petitioners instituted a joint action against the Railroad Commission of Texas, the State law enforcement officers, and the respondents, who are the Federal authorities charged with the enforcement of the National Industrial Recovery Act, and the Petroleum Code. They alleged:

That the Railroad Commission of Texas, acting in conjunction with the Conservation Boards of other oil producing states, had entered into an illegal plan to limit the production of crude petroleum in the United States to a figure recommended by the Oil States Advisory Committee, and the production in Texas to approximately 900,000 barrels; that respondents were cooperating with the Commission and aiding and assisting it in the enforcement of this plan of curtailment.

That the purpose of this plan was to curtail the production of petroleum to such an extent as to artificially create a market demand for petroleum and its by-products, the objective being the creation and maintenance of high prices; that in furtherance of said scheme the Railroad Commission had put into effect certain so-called "Proration Orders" curtailing the production from petitioners' wells to less than 1% of their producing capacity; that while the Commission purported to be acting under authority of the State conservation law, as a matter of fact, its acts and orders were unauthorized and had no relation to conservation.

That, in furtherance of the same plan, a majority of the oil industry formulated a so-called Code of Fair Competition for the Petroleum Industry, and succeeded in getting it approved by the President; that while respondents claimed to be acting under authority of the National Industrial Recovery Act, as a matter of fact, they were without any lawful authority, and while they claimed to be engaged in regulating interstate commerce, they were in fact attempting to enforce the said plan of curtailment, and the so-called Code of Fair Competition for the Petroleum Industry.

That their wells were capable of producing large quantities of oil in excess of the allowable fixed by the Commission, without causing waste, and without resulting in injury or damage of any kind or character; that they had a ready market for large quantities of oil in excess of what they were permitted to produce; that under the laws of Texas they were the absolute owners of the oil underneath the land covered by their leases, and were lawfully entitled to all the oil which they could capture through their wells, so long as they operated their wells so as not to commit waste, or cause injury or damage to the producing sands or the common reservoir.

That as an incident to the enforcement of said plan, the Honorable Harold L. Ickes, Secretary of the Interior, and Administrator of the Petroleum Code, had promulgated certain rules and regulations, requiring them to furnish reports giving the location of their properties, the allowable fixed for each well, the daily production of each well, and the disposition of the oil; that respondents, acting under the orders of Honorable Harold L. Ickes, were from time to time going upon the properties of petitioners, demanding access to their records, gauging their tanks, and digging up their pipe lines; that respondents were threatening to institute civil actions and criminal prosecutions against petitioners to compel compliance with the orders, rules and regulations of the said Harold L. Ickes, and unless enjoined would institute and prosecute such actions.

Petitioners attacked, first, the validity of the orders, rules and regulations of the Secretary of the Interior, and the Petroleum Code, as being unauthorized by the National Industrial Recovery Act, and, second, the validity of the Act itself, because:

(a) It attempts to delegate the legislative power of Congress to the President;

(b) It is an attempt to vest in the President the powers of a supreme dictator;

(c) It is contrary to the 4th, 5th, 8th, 9th, and 10th amendments to the National Constitution by reason of specific reasons set out in the bill (R. 18-19).

Petitioners prayed for both an interlocutory and permanent injunction. A three-judge court was convened as provided by Section 380 U. S. C. That court *in limine* held that the bill stated two separate causes of action, one against the State officials and one against the Federal officials. It decided the case against the State officials in favor of the defendants, and dismissed the bill, and referred the case against the Federal officials to the District Judge (Amazon Petroleum Corporation *v.* Railroad Commission, 5 Fed. Sup. 633). The District Court rendered a final decree by which the respondents were perpetually enjoined from enforcing Section IV of Article III of the Petroleum Code and Regulation IV of the Secretary of the Interior (R. 175-179). (Opinion of District Judge, 5 Fed. Sup. 639.) On appeal the Circuit Court of Appeals reversed the District Court and ordered the bill dismissed (R. 242-254).

B.

Reasons Relied on for Allowance of the Writ.

I.

The United States Circuit Court of Appeals has, in this case, decided an important question of Federal law which has not been, but should be, settled, by this Court.

II.

The United States Circuit Court of Appeals, in this case, has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

III.

The United States Circuit Court of Appeals has erroneously held:

(a) That subsection 9 (c) of the National Industrial Recovery Act is valid;

(b) That Section 4, Article III, of the Petroleum Code is not involved in this action.

(c) That the rules and regulations of the Secretary of the Interior complained of are reasonable, and are not in violation of the Fourth and Fifth Amendments to the National Constitution.

(d) That petitioners had an adequate remedy at law and were not entitled to injunctive relief.

(e) That the provisions of the Petroleum Code applicable had the force of valid enactments of Congress.

(f) That the acts of respondents were reasonably necessary, or intended to prohibit the shipment in interstate commerce of oil produced in excess of State quotas.

(g) That the regulations of the Honorable Harold L. Ickes, Secretary of the Interior, are authorized by the National Industrial Recovery Act.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 7350, Archie D. Ryan, S. D. Bennett and Phil E. Baer, Appellants, *v.* Amazon Petroleum Corporation et al., Appellees, and that the said decree of the United States Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

F. W. Fischer,
Tyler, Texas,
W. Edward Lee,
J. N. Saye,
W. T. Saye,
Longview, Texas,
Counsel for Petitioners.

BRIEF.

I.

The Opinions of the Courts Below.

The opinion in the District Court is reported in Amazon Petroleum Corporation et al. *v.* Railroad Commission et al., 5 Fed. Sup. 639 (R. 204). The opinion of the Circuit Court of Appeals, dated May 22, 1934, has not been officially reported, but appears in the record (R. 242-254).

II.

Jurisdiction.

1. The date of the decree of the Circuit Court of Appeals is May 22, 1934 (R. 254). Petition for rehearing was filed June 11, 1934 (R. 255). It was denied June 29, 1934 (R. 261).

2. Petitioners assert:

(a) That the National Industrial Recovery Act is void in its entirety because it is a delegation by Congress of legislative power to the President;

(b) That, regardless of other sections of the Act, Subsection 9 (c) is void, first, because a delegation of legislative power to the President, and, second, because Congress itself is not authorized to prohibit the shipment of oil in interstate commerce;

(c) That, as a matter of fact, the acts of respondents bear no relation to the regulation of interstate and foreign commerce, and are unreasonable and unnecessary to accomplish that purpose, the real objective being to curtail, regulate and allocate production from petitioners' wells, and thus enforce the Petroleum Code, which results in depriving petitioners of their property, and the use thereof, contrary to the Fifth Amendment to the National Constitution; that the enforcement of the National Industrial Recovery Act and the Petroleum Code is an invasion by the National Government of States' rights contrary to the Constitution;

(d) That the regulations requiring reports and inspections are merely incident to the enforcement of the Code, and are, therefore, unauthorized, and, in addition, offend against the Fourth and Fifth Amendments;

(e) That the penalties prescribed are so severe and drastic that they are calculated to affright those affected thereby from applying to the courts to ascertain their rights, and, knowing them, dare maintain them, and that the terms of the Act are so vague and indefinite that it is impossible for those affected thereby to formulate a standard of conduct whereby they may know when they are or are not violating its inhibitions, and for that reason the penalty provisions are void.

The United States Circuit Court of Appeals held Subsection 9 (c) of the National Industrial Recovery Act a valid Act of Congress, and that the reports, inspections and other acts of the respondents were reasonably necessary in the enforcement of that section of the Act. It refused to pass on the validity of the Petroleum Code, but denied injunctive relief against prosecutions for violations of the Code (R. 242-254). It held that inasmuch as the Act provided specific methods of enforcement, those affected would be adequately protected by violating the law, inviting prosecution, and then running the risk of successfully defending (R. 250).

3. The jurisdiction of the Supreme Court is invoked under Section 240 of the Judicial Code, as amended by the Acts of February 13, 1925.

III.

Statement of the Case.

A full statement is set forth in the petition under heading "A".

IV.

Specification of Errors.

For the sake of brevity, petitioners adopt as their specification of errors the assignments under II of heading "B" of their petition.

V.

Summary of Argument.

Point A. The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

Point B. The Circuit Court of Appeals has decided a Federal question probably in conflict with applicable decisions of this Court.

Point A.

As stated by the Circuit Court of Appeals, the National Industrial Recovery Act is a novel piece of legislation. To say the least, it is a radical departure from our traditions. It is unquestionably an attempt by the National Government to exercise powers heretofore universally believed to have been reserved in the States. It creates and vests in the National Government new and virtually unlimited powers to regulate the minutest details of the business and affairs of men. It abridges and prohibits the exercise of rights which heretofore, under the decisions of this Court, could not be interfered with by the States. If upheld in its entirety, it wipes out state lines, and destroys our dual system of government. Therefore, it is respectfully submitted that the construction of each provision of the Act is of the utmost importance, and calls for the supervisory powers of this Court. (Applicable parts of the Act appear in the Appendix.)

Point B.

The decision of the Circuit Court of Appeals is in conflict with the decisions of this Court on several points, viz:

First: It held that Subsection 9 (c) of the Act is not a delegation of legislative power. This is in direct conflict with the decisions of this Court in the following cases:

Field v. *Clark,* 143 U. S. 649, 12 S. Ct. 495;
Buttfield v. *Stranahan,* 192 U. S. 470, 24 S. Ct. 349;
Union Bridge Co. v. *United States,* 204 U. S. 364, 27 S. Ct. 367;
St. Louis & Iron Mountain Ry. Co. v. *Taylor,* 210 U. S. 281, 28 S. Ct. 616;
Mutual Film Corporation v. *Industrial Commission,* 263 U. S. 230.

As stated in *Field* v. *Clark, supra*: "That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

It is true that in the above cases, the Court found that Congress had not delegated legislative power, but, on the contrary, had given expression to its legislative will, and directed the President to fill in the details. The enactments were complete. Their enforcement was left to the Executive. In some cases, the operation of the law was contingent on the occurrence of certain events, but upon the happening of such event, no discretion was left to the President.

Not so with the Act under consideration, and particularly Subsection 9 (c). The Act does not prohibit the shipment of excess oil in interstate or foreign commerce. It does not make it unlawful to ship excess oil in interstate or foreign commerce. Neither does it provide that it shall be unlawful or prohibited upon the occurrence of certain events. There is no law on the subject. Today the President has decreed that excess oil shall not be shipped in interstate or foreign commerce. Tomorrow the decree may be vacated. Whether or not the shipment of excess oil in interstate and foreign commerce is prohibited rests entirely within the discretion of the President.

This is also true of the entire National Industrial Recovery Act. Congress enacted nothing. It declared it to be the policy of Congress to remove obstructions from the free flow of commerce, provide for the general welfare by promoting the organization of industry, to induce and maintain united action of labor, etc.

But, to effectuate that policy, Congress enacted nothing. It, in substance, directed the President, collaborating with the various industries of the nation, to formulate such laws and do such things as, in his discretion, might be deemed necessary to carry the declared policy into execution.

It is, therefore, respectfully submitted that if this is not a delegation of the legislative powers of Congress, it would be impossible to select words that would express a delegation.

Second. The trial court found that respondents were, under the guise of regulating interstate commerce, attempting to regulate and curtail production (Findings of Fact, R. 180-184). This, respondents are without authority to do.

Champlin Refining Co. v. *Corporation Commission,* 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062;

Oliver Iron Mining Co. v. *Lord,* 226 U. S. 172, 43 S. Ct. 526, 67 L. Ed. 526;

Hope Natural Gas Co. v. *Hall,* 274 U. S. 284, 47 S. Ct. 639; 71 L. Ed. 1049;

Foster Fountain Packing Co. v. *Haydel,* 278 U. S. 1, 49 S. Ct. 1, 73 L. Ed. 147;

Utah Power & Light Co. v. *Pfost,* 286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038;

Hammer v. *Dagenhart,* 247 U. S. 251, 38 S. Ct. 529.

It appears to us that the Circuit Court of Appeals bypassed this issue.

Third. The holding that petitioners were not entitled to injunctive relief against civil actions and criminal prosecutions is in conflict with numerous decisions of this Court, such as:

Ex parte Young, 209 U. S. 123, 28 S. Ct. 441;

Philadelphia Co. v. *Stimson,* 223 U. S. 605, 32 S. Ct. 340.

Fourth. It is very doubtful that Congress has the power to prohibit the shipment of oil in interstate and foreign commerce.

Hammer v. *Dagenhart,* 247 U. S. 251, 38 S. Ct. 529;

Brooks v. *United States,* 267 U. S. 432, 45 S. Ct. 345.

Fifth. Admittedly, the petitioners are not engaged in the business of transporting oil in interstate or foreign commerce. The reports which they are required to furnish, and the inspections and visitations to which their properties are subjected, are conceded to be for the purpose of obtaining evidence against others who might be engaged in transporting oil in interstate and foreign commerce. This being true, the acts of the respondents are unauthorized, and the decision of the Circuit Court of Appeals is clearly in conflict with the holding of this Court in *Federal*

Trade Commission v. *American Tobacco Co.,* 264 U. S. 298, 44 S. Ct. 336.

For convenience of the Court, applicable parts of the Recovery Act and the Petroleum Code are affixed as an appendix; also nine copies of petitioners' brief in the Circuit Court of Appeals.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the petitioners may have the relief awarded them by the District Court, and that to such end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals and finally reverse it.

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Counsel for Petitioners.

APPENDIX A.

Federal Industrial Control Act.

"The National Industrial Recovery Act."

Approved by the President, June 16, 1933, at 11:55 a. m., E. S. T.

(Public—No. 67—73d Congress.)

(H. R. 5755.)

An Act to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I.

Industrial Recovery.

Declaration of Policy.

Sec. 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Adminstrative Agencies.

Sec. 2 (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition.

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivision thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices; Provided, further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the

President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Agreements and Licenses.

Sec. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Sec. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

Limitations Upon Application of Title.

Sec. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

Sec. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

Application of Agricultural Adjustment Act.

Sec. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes," approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

Oil Regulation.

Sec. 9 (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

Rules and Regulations.

Sec. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500 or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

APPENDIX B.

Petroleum Code.

Article III.

Production.

Section 1. The President is hereby requested, after such investigation and hearing as is prescribed by, and subject to the limitations contained in, Title 1 of the National Industrial Recovery Act, to limit imports of crude petroleum and petroleum products for domestic consumption to volumes bearing such ratio to the estimated volume of domestic production as will effectuate the purposes of this Code and the National Industrial Recovery Act.

Section 2. Withdrawals of crude oil from storage shall be subject to approval by the Planning and Coordination Committee but for the remainder of 1933 shall be limited in the aggregate to an average not in excess of 100,000 barrels daily. Additions to storage beyond the necessary limits of fluctuations in working stocks shall be made only with the approval of the Planning and Coordinating Committee.

Section 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

Section 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code.

Section 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State. If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this Code in excess of any such quota assigned to him shall be deemed as unfair trade practice and in violation of this Code; and, further, persons engaged in the petroleum industry or any branch thereof in any State may adopt a supplemental Code for that State, to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this Code.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No.................

PANAMA REFINING COMPANY et al.,
Petitioners,

vs.

A. D. RYAN, S. D. BENNETT, and J. HOWARD MARSHALL,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

THE OPINIONS OF THE COURTS BELOW

The opinion in the district court is reported in Amazon Petroleum Corporation et al. vs. Railroad Commission of Texas et al., and Panama Refining Company et al. vs. Ryan et al., 5 Fed. Sup. 639. The opinion of the United States Circuit Court of Appeals, entitled Archie D. Ryan et al. vs. Amazon Petroleum Corporation et al., which is dated May 22nd, 1934, is not yet officially reported, but is fully set out in the record.

II.

JURISDICTION

1. The date of the decree of the United States Circuit Court of Appeals, sought to be reviewed, is May 22nd, 1934.

2. Petitioners assert: (a) that Subsection 9(c) of the National Industrial Recovery Act is repugnant to Article I, Section I of the Constitution of the United States, in that Congress has thereby delegated to the President the power of legislation; (b) that Regulations IV, V, and VII promulgated by Harold L. Ickes, who was appointed by the President to enforce the provisions of Subsection 9(c), which regulations were being enforced against petitioners by respondents, are void for the reason that they are not authorized by Subsection 9(c) or any other provision of the National Industrial Recovery Act; (c) that petitioners may not be subjected to criminal prosecution for the imprisonment and penalties provided in Subsection 9(c) and the regulations, for they, as producers and refiners

of petroleum, are not included within the terms of the Act of Congress, and the things required of them by the regulations are not required by the Act of Congress.

3. The jurisdiction of the Supreme Court is invoked under Section 240 of the Judicial Code, as amended by the Acts of February 13, 1925, and upon the further ground that the decision of the United States Circuit Court of Appeals, in holding that Subsection 9(c) of the National Industrial Recovery Act is not an unconstitutional delegation of legislative power to the President, is in conflict with the principles announced by this court in Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Union Bridge Company vs. United States, 204 U. S. 365; St. Louis & Iron Mountain Ry. Co. vs. Taylor, 210 U. S. 283; and Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. 230.

III.

STATEMENT OF THE CASE

As is shown by the opinions of the district and circuit courts, this case, while tried separate from that of Amazon Petroleum Corporation et al. vs. Lon A. Smith et al., yet, in disposing of both cases, both the district and circuit courts entered but one opinion, which is applicable to both cases as the Federal questions raised in the Amazon case are identical with those raised in this case, with the exception that in the Amazon case an attack was made upon Article III, Section 4 of the Code of Fair Competition for the Petroleum Industry promulgated by the President under the provisions of the National Industrial Recovery Act. That question is not involved in this case, and, therefore, the holding of the district and circuit courts, in so far as same applied to the Petroleum Code, is not involved in this case.

The Panama Refining Company, which is a refiner of crude petroleum, joined by A. F. Anding, who is a producer of petroleum, brought this suit to restrain respondents from prosecuting them for their refusal to furnish verified daily reports as to the production, sale, and disposition of oil by the producer, and the purchase, transportation, storage, refining, and disposition of the products thereof by the refiner, as required by the attacked regulations. Regulation IV applies to the producer, and Regulation V applies to the refiner. They also attacked Regulation VII, which required the keeping of books by each of them as to their production, storage, transportation, purchase, sale, and refining of petroleum and for the inspection thereof by respondents. Petitioners failed and refused to comply with these regulations and criminal prosecution was instituted against them because of having failed to comply with said regulations. Respondents, under the assertion of power as incident to their authority to enforce the attacked regulations, also went upon the property of petitioners, over their objections, gauged their tanks, examined their property, and dug up their pipe lines, which resulted in the destruction of the same. Relief against such trespasses was also prayed for.

The district court found as a fact that petitioners were not engaged in interstate commerce, and concluded that they were not subject to the operation of Subsection 9(c) of the National Industrial Recovery Act, and, therefore, the attacked regulations were not enforceable against them, and, accordingly, granted petitioners the injunctive relief prayed for. He concluded that it was unnecessary to pass upon the validity of Subsection 9(c), although that question was raised by petitioners. This decree was reversed by the United States Circuit Court of Appeals and petitioners' bill of complaint ordered dismissed.

IV.

POINTS RELIED UPON FOR REVERSAL

POINT A

The United States Circuit Court of Appeals erred in holding that Subsection 9(c) of the National Industrial Recovery Act is a valid act of Congress.

POINT B

Said court erred in holding that Regulations IV, V, and VII, promulgated by Harold L. Ickes for the purpose of enforcing said act, are valid and enforceable against petitioners who are not engaged in interstate commerce.

POINT C

Said court erred in holding that petitioners may be subjected to criminal prosecution for failure to comply with the attacked regulations.

V.

ARGUMENT

For the convenience of the court, we here set out Subsection 9(c) of the National Industrial Recovery Act, which is as follows, to-wit:

> "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized

> agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both."

Regulations IV, V, and VII complained of, which were promulgated under the purported authority of the National Industrial Recovery Act for the purpose of enforcing the above quoted subsection of said act, are quite lengthy; therefore, we will only state the substance of them here. However, they are set out in full in petitioners' bill of complaint. Regulation IV requires that every producer of oil shall file with the Division of Investigation of the Department of the Interior every thirty days or more often, if required, a sworn report showing the number of barrels of petroleum produced since the last report, the property from which produced, giving the location of the wells, the amount and to whom the same was disposed of, and the amount still on hand. Said report shall contain a statement under oath that the amount of oil so produced by the producer was not produced in violation of any law or regulation of any agency of the state in which the same is produced. Regulation V provides that every refiner and other purchaser of oil shall file daily sworn reports with said agency, showing the amount of oil purchased and from whom purchased, the location of the well from which it was produced, and the disposition of the oil so purchased, and shall contain the further statement that said oil so purchased was not produced in violation of any state law or rule or regulation of any agency of the state. Regulation VII provides that every person subject to the operation of Subsection 9(c) of the National Industrial Recovery Act shall keep open for the inspection of the agents of the Division of Investigation, Department of the Interior, adequate books and records of all transactions with reference to the production, purchase, transportation, storage, and refining of oil. Each of these regulations provides that the failure to comply with same subjects the offender to imprisonment for not more than six months and to a fine of not more than $1000.00 or both, which is the penalty prescribed by Subsection 9(c) for violation of any order made by the President under said subsection. There have been no regulations promulgated purporting to authorize the respondents to go upon petitioners' property and gauge their tanks and dig up their pipe lines and otherwise inspect the same, but this authority is asserted by respondents as incident to the right to enforce the attacked regulations.

POINT A

Subsection 9(c) of the National Industrial Recovery Act is an unconstitutional delegation of legislative power to the President, for the reason that it does not

manifest the policy or will of Congress upon the question of the prohibition of the movement in interstate and foreign commerce of petroleum or its products produced or withdrawn from storage in violation of a state law or regulation. Whether these commodities are to move freely in such commerce or be prohibited therefrom, is left entirely to the discretion and will of the President. In the cases hereinafter cited, in which acts of Congress were attacked on the ground of unconstitutional delegation of legislative power, which, however, were sustained by this court, the acts manifested the policy or will of Congress with reference to the subject regulated and left to the discretion of the executive department only the matter of filling in details or the finding of facts, upon the ascertainment of which the will of Congress then became effective; and in each case it was pointed out by this court that Congress had legislated on the subject as far as was reasonably practical and from the necessities of the case was compelled to leave to the executive officials the duty of bringing about the result pointed out by the statute.

Field vs. Clark, 143 U. S. 649;

Buttfield vs. Stranahan, 192 U. S. 470;

Union Bridge Company vs. United States, 204 U. S. 365;

St. Louis & Iron Mountain Ry. Co. vs. Taylor, 210 U. S. 283;

Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. 230.

In the act under consideration, there is nothing involving any fact finding or happening of any contingency upon which the will of Congress is to become effective. The act, when it left the hands of Congress, was not full and complete and capable of enforcement as its act, but remained as a mere nullity until life was breathed into it from an unconstitutional source by the President exercising his discretion to prohibit the movement in commerce of the commodities referred to therein. If he had elected not to prohibit the movement of such commodities in commerce, such commodities would still be free and untrammelled subjects of interstate and foreign commerce, notwithstanding the act of Congress. It therefore follows that the prohibition of the movement of these commodities in interstate commerce results from the discretion and action of the President, and, consequently, the Act of Congress authorizing the President to effect such prohibition in commerce at his discretion, is repugnant to Article I, Section I of the Constitution, and is void.

POINT B

If Subsection 9(c) of the National Industrial Recovery Act was valid, nevertheless, Regulations IV, V, and

VII are not authorized thereby nor enforceable against petitioners, who are engaged only in intrastate commerce, for petitioners, as producers and refiners of petroleum, are not included within the terms or reasonable intendment of the act, and the things required of petitioners by the regulations complained of are not required by the act. Therefore, the effect of the regulations is to extend the scope of the act beyond its terms, which is legislation and not administration, and they are therefore void.

United States vs. Eaton, 144 U. S. 677;

United States vs. United Verde Copper Co., 196 U. S. 207;

Williamson vs. United States, 207 U. S. 425;

United States vs. Grimaud, 20 U. S. 518;

United States vs. George, 228 U. S. 15;

United States vs. 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663.

POINT C

Conceding that the attacked regulations are authorized by Section 10(a) of the National Industrial Recovery Act, wherein it is provided that the President is authorized to make all rules and regulations necessary to carry out the purposes of the act, yet a general

grant of authority to make rules and regulations for the purpose of carrying out the terms of an act is not sufficient authority to subject one to criminal procedure for violating such a regulation.

United States vs. Eaton, 144 U. S. 677;

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Fasulo vs. United States, 272 U. S. 620;

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CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, in order that the petitioners may have the relief awarded them by the district court, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals and finally reverse it.

F. W. FISCHER,
Tyler, Texas,
Counsel for Petitioners.

FILE COPY

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CHARLES ELM

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 260.

AMAZON PETROLEUM CORPORATION ET AL.,
PETITIONERS,

VS.

A. D. RYAN ET AL., RESPONDENTS.

BRIEF FOR PETITIONERS ON WRIT OF CERTIORARI.

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Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is void:

(1) Because Section 3 of the National Industrial Recovery Act, which undertakes to delegate to the President and trade or industrial associations or groups power to promulgate Codes of Fair Competition and give them the force of law, is a delegation of legislative power prohibited by the national constitution 35

(2) Because Section 3 of said Act is an attempt upon the part of the Congress to regulate and control local and private business and concerns in violation of the Tenth Amendment to the National Constitution 35

(3) Because Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is an attempt upon the part of the President and a part of the Petroleum Industry to exercise powers not granted to them by Section 3 (a) of the National Industrial Recovery Act 35

(4) Because Section 4 of Article III of said Code could not become a national law without first having been introduced as a bill in one of the houses of Congress, then have passed both houses, and last be approved by the President or reenacted over his veto 35

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Regulations IV and VII of the Secretary of the Interior are null and void:

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(2) Because Section 10 (a) of the National Industrial Recovery Act is void 42

(3) Because said regulations are not authorized by either section of said Act 42

(4) Because said regulations violate rights guaranteed to the petitioners by both the 4th and 5th Amendments to the National Constitution 46

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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 260.

AMAZON PETROLEUM CORPORATION ET AL.,
PETITIONERS,
VS.
A. D. RYAN ET AL., RESPONDENTS.

STATEMENT.

I.

The petitioners are oil producers. They each own leases covering separate properties by the terms of which they are vested with the absolute, exclusive right to explore and develop the properties and produce all the oil which the properties are capable of producing. They each produce the oil and sell it and deliver it to pipe line companies on the respective properties, title passing from petitioners as soon as the oil is delivered into the pipe lines of the purchasers. Petitioners have nothing to do with transporting or refining the oil, and are not concerned with whether or not the oil, or its products, is handled or transported in interstate or foreign commerce.

II.

The petitioners brought this action to enjoin the Railroad Commission of Texas and the law enforcement officers of the State of Texas and the respondents, referred to in the bill of complaint as federal officers, from enforcing certain orders of the Secretary of the Interior and Administrator of the Petroleum Code and the Railroad Commission of Texas curtailing the production of petitioners' wells to less than one per cent of their producing capacity.

III.

The petitioners alleged and proved by undisputed evidence that the Secretary of the Interior decreed that the daily production for the State of Texas should be 880,000 barrels; that this figure was certified by the Secretary of the Interior to the Railroad Commission of Texas as the allowable for the state; that it was accepted and adopted by the Railroad Commission of Texas, and by it allocated to the different fields in the state; that from time to time the Secretary of the Interior would fix the allowable for the state, certify it to the Commission, and on each occasion the allowable fixed by the Secretary was accepted and adopted by the Commission; that the Commission would then make the allocation to the different fields in the state, determine and fix the amount that each well was permitted to produce, and then enter an order prohibiting the petitioners and other producers from producing in excess of the well allowable so ascertained and fixed by the Commission. Thereafter, the federal and state officers joined hands to compel compliance with the orders of the Commission. (R. 66.)

IV.

The petitioners alleged and proved, and in fact it was admitted by the defendant, that as incident to the enforcement of the aforesaid orders the Secretary of the Interior had promulgated and put into effect certain rules and regulations, requiring the petitioners to furnish reports showing the names, residences and post-office addresses of petitioners, location of their producing properties, number of wells, allowable production as fixed by the Railroad Commission, daily production in barrels from each property, daily production in barrels from each well, amount of all deliveries of petroleum, giving names and places of business of all persons to whom deliveries were made, and the quantity involved in each delivery; also showing all petroleum in storage and a declaration under oath that no part of such petroleum had been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn by any state law or valid regulation or order prescribed by any board, commission, officer or duly authorized agency of the state.

V.

The petitioners alleged that "In doing the acts and things and carrying into effect the orders herein complained of, the defendants, and each of them, claim to be acting under authority of and pursuant to powers conferred upon them by the Conservation Act of the State of Texas, and also under and by virtue of authority conferred by the National Recovery Act, but as a matter of fact they and each of them are acting without any authority whatever, and without any intent or purpose of executing the aforesaid laws, or either of them, and they are mere trespassers attempting to enforce compliance with a scheme of proration hereinafter fully defined." (R. 55.)

VI.

The petitioners alleged, first, that the aforesaid orders were not authorized by the Conservation Laws of the State of Texas, or the National Industrial Recovery Act; that the operation and effect of the orders was to deprive them of their property and the use thereof without due process of law, contrary to the Fifth and Fourteenth Amendments to the National Constitution; second, that if the orders were authorized by the State Conservation Law, the law itself was void as being in violation of the Fourteenth Amendment to the National Constitution in that it deprived them of their property without due process of law, and denied them the equal protection of the law. They alleged that the National Industrial Recovery Act was void as being an attempt by Congress to delegate its legislative powers to the President; as an attempt by Congress to vest in the President the powers of a dictator; as an attempt by the national government to usurp the police powers of the state, contrary to the Tenth Amendment to the National Constitution; as depriving them of their natural and inherent rights, contrary to the Ninth Amendment to the National Constitution; as depriving them of their property without due process of law, in violation of the Fifth Amendment to the National Constitution. They also alleged that the National Industrial Recovery Act, as enforced by the respondents, was in violation of the Fourth and Fifth Amendments to the National Constitution in that it compelled the petitioners to produce their private papers and effects and give evidence against themselves, and that the Act was contrary to the Eighth Amendment to the National Constitution in that it imposed excessive fines and cruel and unusual punishment.

The petitioners alleged that their wells were capable of producing many times the amount of oil which they were being permitted to produce, and alleged and proved that they had a ready market for large quantities of oil in excess of the amount they were permitted to produce under the orders of the Railroad Commission, and by reason of the operation of said orders they were being deprived of producing and selling large quantities of oil and were being compelled to share their markets with others to such an extent as resulted in virtual confiscation of their property, and that by reason of these facts they were daily losing large sums of money. (R. 4-6.)

VII.

The respondents answered and admitted the promulgation and enforcement of the orders complained of, and pleaded in justification, in so far as the respondents were concerned, Section 9 (c) of the National Industrial Recovery Act and Article III of the Petroleum Code. The Railroad Commission answered, pleading that the orders were authorized by the Conservation Laws of the State of Texas.

VIII.

By reason of the fact that the constitutionality of the orders of the Railroad Commission and the State Conservation Act were challenged, a three-judge court was convened pursuant to Section 380, United States Code.

IX.

When the case was called for trial, it was suggested by the presiding judge that the bill stated two separate causes of action, one against the state officers and the other against the federal officers, and that the three-judge court was without jurisdiction to try the action against the federal officers. Both the petitioners and the respondents disagreed with this suggestion, but in order to facilitate matters it was agreed that the entire case would be tried and submitted to the three-judge court, both on the application for an interlocutory injunction and on the merits, and that if the three-judge court decided it was without jurisdiction to hear and decide the action against the federal officers it might be referred to the district court and be decided by the Honorable Randolph Bryant, district judge, on the evidence adduced at the trial before the three judges.

After hearing the evidence, the argument of counsel, and having the cause submitted to them on briefs, the three judges concluded that they did not have jurisdiction of the cause of action against the federal officers and proceeded to decide the case between the petitioners and the state officers, and referred the case as between the petitioners and the federal officers to the district court. That court decided the case in favor of petitioners and granted a perpetual injunction, enjoining the respondents from enforcing or attempting to enforce Section 4, Article III, of the Code of Fair Competition, and from requiring the petitioners to furnish the reports required under Regulation IV of the Rules and Regulations of the Secretary of the Interior, and from instituting any actions of a civil or criminal nature against petitioners for alleged violations of the Code or the regulations of the Secretary of the Interior, and from going upon the property of the petitioners under and by virtue of any authority conferred or attempted to be conferred by the provisions of the Code and regulations involved. (R. 131-135.)

X.

The respondents appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and that court reversed the decree of the district court and dismissed the bills for want of equity. (R. 192.)

XI.

The opinion of the circuit court of appeals, to say the least, is perplexing. It found by the undisputed evidence that the petitioners were not in any way engaged in interstate commerce, but at the same time held that the acts of the federal officers were justified, and in fact authorized, by Section 9 (c) of the National Industrial Recovery Act, which provides that the President is authorized to prohibit the transportation in interstate or foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed therein by any board, commission, officer or other duly authorized agency of a state. It further found that the regulations of the Secretary of the Interior requiring the reports complained of and subjecting the properties of the petitioners to visitations and inspections were reasonably necessary to a proper enforcement of Section 9 (c). Notwithstanding the undisputed evidence that the state allowable was fixed by the Secretary of the Interior and certified to and adopted by the Railroad Commission of Texas, that court held that the question of the power of the federal government to fix the allowable was not involved because the State of Texas had fixed its own quota.

The case was brought to this court on writ of certiorari. The brief in support of the petition for certiorari states the grounds of jurisdiction, gives reference to the opinions of the courts below, together with a specification of errors, and for the sake of brevity those things are here omitted.

SUGGESTION.

While we have not assigned it as error, and do not care to take any advantage of it, if it can be avoided, we feel it our duty to make the following suggestion: It is our opinion that the bill of complaint in this action did not state separate causes of action against the state authorities and the federal authorities. On the other hand, we think it clearly states one cause of action against all of the defendants. The bill alleges that all the defendants were attempting to accomplish the same thing. It alleges that they claimed to be acting under authority of both the National Industrial Recovery Act and the State Conservation Law. By reason of the attack upon the constitutionality of the State Conservation Act and the orders made by authority claimed thereunder, it was necessary that a three-judge court be convened. It is our opinion that when this was done the three-judge court had jurisdiction of all the issues involved in the case, and that it should have decided them, and that it erred in refusing to decide the issues between the petitioners and the federal officers and in referring that part of the case to the district judge.

Louisville & Nashville Ry. Co. v. *Garnett,* 231 U. S. 298.

This is called to the court's attention because it involves an important matter of procedure. If the three-judge court had decided the entire case, as we contend it should have, the appeal should have been taken direct to this court.

Section 380, U. S. C. A.
Stratton v. *St. L. S. W. Ry. Co.,* 282 U. S. 10, 51 S. Ct. 8.

SUMMARY OF ARGUMENT.

Point A.

The petitioners are not engaged in interstate commerce, and their activities do not affect interstate commerce, except incidentally and remotely; their business is, therefore, not subject to regulation by the federal government.

Point B.

The National Industrial Recovery Act, and particularly Section 9 (c), is void as an attempted delegation of legislative power to the President.

Point C.

Section 9 (c) of the National Industrial Recovery Act is void because Congress does not have power under the commerce clause to prohibit the transportation in interstate and foreign commerce of harmless commodities.

Point D.

The National Industrial Recovery Act is void because it is an attempt by the national government to usurp powers reserved to the states and the people by the Tenth Amendment to the Federal Constitution.

Point E.

The national emergency, brought about by the financial depression, did not bestow upon Congress the power to enact the National Industrial Recovery Act.

Point F.

Article I, Section 8, U. S. Constitution, which empowers the Congress to declare war, to raise and support armies, to provide and maintain a navy, and to make laws which shall be necessary and proper for carrying into effect the foregoing powers, does not authorize the Congress to require petitioners to keep their oil underground until such time as the national government may need it in offensive or defensive warfare, without paying petitioners just compensation for it.

Point G.

Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is void:

(1) Because Section 3 of the National Industrial Recovery Act, which undertakes to delegate to the President and trade or industrial associations or groups power to promulgate Codes of Fair Competition and give them the force of law, is a delegation of legislative power prohibited by the national constitution;

(2) Because Section 3 of said Act is an attempt upon the part of the Congress to regulate and control local and private business and concerns in violation of the Tenth Amendment to the National Constitution;

(3) Because Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is an attempt upon the part of the President and a part of the Petroleum Industry to exercise powers not

granted to them by Section 3 (a) of the National Industrial Recovery Act;

(4) Because Section 4 of Article III of said Code could not become a national law without first having been introduced as a bill in one of the houses of Congress, then have passed both houses, and last be approved by the President or reenacted over his veto.

Point H.

Regulations IV and VII of the Secretary of the Interior are null and void:

1. Because Section 9 (c) of the National Industrial Recovery Act is void.

2. Because Section 10 (a) of the National Industrial Recovery Act is void.

3. Because said regulations are not authorized by either section of said Act.

4. Because said regulations violate rights guaranteed to the petitioner by both the Fourth and Fifth Amendments to the National Constitution.

Point I.

The circuit court of appeals erred in holding that petitioners have an adequate remedy at law and are, therefore, not entitled to injunctive relief.

ARGUMENT.

Point A.

The petitioners are not engaged in interstate commerce, and their activities do not affect interstate commerce, except incidentally and remotely; their business is, therefore, not subject to regulation by the federal government.

It is settled beyond cavil that mining, manufacturing, and producing are local businesses, subject to local regulations, and do not constitute interstate commerce or affect interstate commerce in such manner as to empower regulation by Congress.

United Mine Workers of America v. *Coronado Coal Co.*, 259 U. S. 407, 42 S. Ct. 570.

Oliver Iron Mining Co. v. *Lord*, 262 U. S. 172, 67 L. Ed. 929, 43 S. Ct. 526.

Gibbons v. *Ogden*, 9 Wheat. 1.

Hope Natural Gas Co. v. *Hall*, 274 U. S. 284, 71 L. Ed. 1049, 47 S. Ct. 639.

Foster-Fountain Packing Co. v. *Haydel*, 278 U. S. 1, 73 L. Ed. 147, 49 S. Ct. 1.

Utah Power & Light Co. v. *Pfost*, 286 U. S. 165, 76 L. Ed. 1038, 52 S. Ct. 548.

Hammer v. *Dagenhart*, 247 U. S. 251, 38 S. Ct. 529.

Kidd v. *Pearson*, 128 U. S. 1, 32 L. Ed. 351.

Mobile County v. *Kimball*, 102 U. S. 692.

Bailey v. *Drexel Furn. Co.*, 259 U. S. 20, 66 L. Ed. 817, 42 S. Ct. 449.

Employers' Liability Cases, 207 U. S. 463, 52 L. Ed. 297.

Hill v. *Wallace,* 259 U. S. 44, 42 S. Ct. 453.
Heisler v. *Thomas Colliery Co.,* 260 U. S. 245.
United Leather Workers, etc., v. *Herkert,* 265 U. S. 457.

It has been specifically held by this court that producing oil is not interstate commerce, and that restriction of production, even though such restriction indirectly diminishes the amount of oil entering the channels of interstate commerce and thereby in a measure obstructs the free flow of commerce, is not such a direct interference with the free flow of interstate commerce as to be a violation of the interstate commerce clause of the United States Constitution.

Champlin Refining Co. v. *Corporation Commission,* 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062.

We are not overlooking the contention of respondents that something like 85% of the oil produced in Texas and the products thereof eventually find their way into the channels of interstate commerce. Our answer to this argument is that certainly it was never the intention of the framers of the constitution that Congress should regulate the internal affairs of all businesses, the products of which, in the process of passing from producer or manufacturer to consumer, pass through the channels of interstate commerce. Such a construction would result in congressional regulation of all business. Of course, a large percentage of cotton and the products thereof, corn and the products thereof, wheat and the products thereof, cattle, hogs, and, in fact, all commodities, eventually flow through the channels of interstate commerce. This, of course, does not mean that the farmer, the cattle raiser, the miner or the manufacturer, is engaged in interstate commerce. Such a distorted and unreasonable construction of the commerce clause beyond question would result in the destruction of our present dual form of government, and the substitution therefor of a centralized government in Washington whereby eventually all businesses, vocations and pursuits would be tediously and minutely regulated by federal bureaus.

Argument to the contrary is predicated upon a misconception of the holding of the court in such cases as the Shreveport rate case, *Houston E. & W. T. Ry. Co.* v. *U. S.*, 234 U. S. 342; the stockyards cases, such as *Stafford* v. *Wallace*, 258 U. S. 495; and the Grain Futures Act case of *Chicago* v. *Olsen*, 262 U. S. 1.

In the Shreveport rate case, the charge was made that the carriers had made rates out of Dallas and other Texas points into eastern Texas which were much lower than those which they had made into Texas from Shreveport, Louisiana, a competing point. The Interstate Commerce Commission made an order directing that the intrastate rate maintained by carriers under state authority should be changed to the extent necessary to prevent a result which in the opinion of the Commission operated as an unjust discrimination against interstate commerce. This court held that the intrastate rate resulted in discrimination and caused an obstruction of interstate commerce. The court said:

> "Congress is entitled to maintain its own standard as to these rates, and to forbid any discrimina-

> tory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

In the stockyards cases, it was held, first, that this was a business affected with a public interest; second, that it was controlled by a monopoly; third, that the manipulations of the monopoly were obstructing the free flow of interstate commerce, and, fourth, that the stockyards under all the circumstances were merely a throat through which commerce should continue with an uninterrupted flow.

The grain futures case was based on the same reasoning as the stockyards case.

It is not believed that by any process of reasoning these cases can be made applicable to individual oil producers. It does not appear from the record that they are acting collectively or individually to obstruct or interfere with the free flow of interstate commerce, or that anything they have done, either directly or indirectly, affects the free flow of commerce.

Concluding our argument on this point, we do not believe it is possible that the law could be more succinctly stated than it was by His Honor, Chief Justice Hughes, appearing before the Federal Oil Conservation Board in 1926, we understand, as counsel for the American Petroleum Institute. He stated his opinion of the law as follows:

> "It may therefore be safely taken for granted that under the powers to regulate commerce Congress has no constitutional authority to control the mere

> production of petroleum on lands (other than Indian lands) within the territory of a state. All plans for requiring unit operation or otherwise, which involve the assertion of such a power on the part of Congress do not require discussion. They proceed from an utterly erroneous conception of federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government."

The federal government, therefore, has no constitutional power to regulate petitioners' businesses.

Point B.

The National Industrial Recovery Act, and particularly Section 9 (c), is void as an attempted delegation of legislative power to the President.

> "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain, and by that constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."
>
> Cooley, Constitutional Limitations, 7th Ed. 163.

The rule has been stated by this court as follows:

"That Congress cannot delegate legislative power to the President is a principle universally recognized

as vital to the integrity and maintenance of the system of government ordained by the constitution."
Field v. *Clark,* 143 U. S. 649, 36 L. Ed. 294.

This doctrine is confirmed in the following cases:

Buttfield v. *Stranahan,* 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349.

Union Bridge Co. v. *U. S.,* 204 U. S. 364, 51 L. Ed. 523.

St. Louis & I. M. Ry. Co. v. *Taylor,* 210 U. S. 281, 28 S. Ct. 616.

Mutual Film Corp. v. *Industrial Commission,* 236 U. S. 230, 35 S. Ct. 387.

The rule as now established seems to be that while Congress cannot delegate its lawmaking power, a discretionary authority may be granted to executive and administrative authorities, first, to determine in specific cases when and how the powers legislatively conferred are to be exercised, and, second, to establish administrative rules and regulations, binding both upon their subordinates and upon the public, fixing in detail the manner in which the requirements of the statutes are to be met and the rights therein created to be enjoyed.

A cursory examination of the National Industrial Recovery Act discloses that it not only delegates to the President the absolute power to enact such legislation as he deems expedient pertaining to any and all of the industries in the nation, so long as he does not violate certain inhibitions set forth in the Act, but the Act even attempts to delegate to the industries themselves the power to formulate, codify and adopt such laws as they deem fit and proper to carry into effect the declared policy of Congress, the declared policy being "To remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; to induce and maintain united action of labor and management under adequate governmental sanctions and supervision; to elminate unfair competitive practices; to promote the fullest possible utilization of the present productive capacity of industries; to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources." (Sec. 1, N. I. R. A.)

It will be noted that the entire enacting part of the Act, if it has an enacting clause, is contained in the foregoing quotation. It is also interesting to note that the policies declared by Congress were nothing more than a reiteration of what has been the policy of the United States Government since it was founded. In brief, Congress has stated that it is its policy to do whatever can be done to relieve the existing depression, and, since it does not know what to do, it attempts, by Section 3 of the Act, to give each industry power and authority to formulate and adopt, subject to the approval of the President, such laws as in the opinion of a majority of the various industries are best calculated to accomplish that objective.

In overruling us on this point, the circuit court of appeals made the following comment:

> "The Code is a novelty in legislation. Its making was not a delegation by Congress of a power of legislation to the various trade or industrial groups mentioned in Sec. 3. The groups could really do nothing but advise the President, just as Congress itself is often advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended code or imposing an involuntary one that gives it force."

This, to us, seems to be an unusual holding. As a matter of fact, approval of the President is required before any act of Congress becomes a law, except in cases where his veto is overridden. We do not believe it can be said, however, that merely because acts of Congress become enforceable when approved by the President that acts of the various industries of the country, acting instead of Congress, can become laws when approved by the President. We do not find in the constitution either expressed or implied power in Congress to delegate to the President and to the various trade industries acting cooperatively the power to enact laws governing the industries.

We freely admit that Congress can enact laws and leave the filling in of details to administrative officers, and may provide that certain provisions of laws shall be operative or inoperative upon the happening of contingencies, such contingencies to be ascertained and determined by the administrative officers, but the Recovery Act goes far beyond this. It gives to the President and the various trade groups and industries the formulation, enactment, codification and enforcement of the law.

Undoubtedly, there could not be a clearer delegation of legislative power than Section 9 (c). This section does not make it unlawful to ship excess oil in interstate commerce. It does not prohibit the shipment of excess oil in interstate commerce. It provides no penalty for shipping excess oil in interstate commerce. It does not provide that it shall be unlawful to ship excess oil in interstate commerce upon the happening of any contingency, or that upon the happening of certain contingencies the President may prohibit the shipment of excess oil in interstate commerce. It merely provides that

> "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a state."

Therefore, whether it is a violation of law to ship excess oil in interstate commerce rests solely in the discretion of the President, and the cases above cited clearly hold that the discretionary powers of Congress cannot be delegated.

Point C.

Section 9 (c) of the National Industrial Recovery Act is void because Congress does not have power under the commerce clause to prohibit the transportation in interstate and foreign commerce of harmless commodities.

It is stated in Willoughby on the Constitution of the United States, Vol. 2 (2nd Ed.), page 721, Sec. 415:

> "There can be but little question that the chief and possibly the entire purpose of the commerce clause was, so far as interstate commerce was concerned, to empower the federal authorities to prevent the states from interfering with the freedom of commercial intercourse between themselves or with foreign nations."

It should be borne in mind that the right of intercourse between the states is not a constitutional right. It is a natural and inherent right, subject to be regulated by Congress by virtue of the commerce clause of the constitution. The proposition was stated by Chief Justice Marshall as follows:

> "In pursuing this inquiry at the bar, it has been said that the constitution does not confer the right of intercourse between state and state. That right derives its source from those laws whose authority is accepted by civilized men throughout the world. That is true. The constitution found it an existing right and gave to Congress the power to regulate it."
>
> *Gibbons* v. *Ogden,* 9 Wheat. 1.

With the foregoing principles in mind, let us consider whether or not Congress has power to prohibit the shipment of petroleum in interstate commerce.

In Willoughby on the Constitution of the United States, Vol. 2 (2nd Ed.), page 994, Sec. 592, it is stated:

> "The facilities of interstate commerce may not be refused by Congress to commodities not dangerous to transport and of such a character that their use or consumption will do no injury, moral or physical, to anyone, simply upon the ground that they have been produced or manufactured in ways or under conditions objectionable to Congress."

This proposition has been squarely settled by this court in the Child Labor Law case.

In this case, this court held that the federal act was void upon the double ground that it was not a *regulation* of commerce, since it was concerned neither with the safety and efficiency of the carrying on of that commerce, nor the prevention of an undesirable result following transportation, and because the act was, in essence, a regulation of production or manufacture, a matter within the exclusive jurisdiction of the states.

Hammer v. *Dagenhart*, 247 U. S. 251.

In this case, the court further said:

> "In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary *commercial commodities*, to regulate the hours of labor of children in factories and mines within the states—a purely state authority. Thus the act in a *two-fold* sense is repugnant to the constitution. *It not only transcends the authority delegated to Congress over commerce,* but also exerts a power as to a purely local matter to which the federal authority does not extend. The far-reaching result of upholding the act cannot be more plainly indicated than by pointing out that if

> Congress can thus regulate matters intrusted to local authorities by prohibition of the movement of commodities in interstate commerce, *all freedom of commerce will be at an end*, and the power of the states over local matters may be eliminated and thus our system of government be practically destroyed." (Our italics.)

It will no doubt be urged by the respondents that this contention is contrary to the holding in the liquor cases, such as *U. S.* v. *Hill,* 248 U. S. 420; the lottery cases, such as *Champion* v. *Ames,* 188 U. S. 321; the Pure Food Law cases, such as *Hipolite Egg Co.* v. *U. S.,* 220 U. S. 45, and *McDermott* v. *Wisconsin,* 228 U. S. 115; the white slave cases, such as *Hoke* v. *U. S.,* 227 U. S. 308, and *Caminetti* v. *U. S.,* 246 U. S. 470; the wild game case of *Rupert* v. *U. S.,* 181 Fed. 87 (C. C. A. 8th, 1910); the Motor Vehicle Theft Act case of *Brooks* v. *U. S.,* 267 U. S. 432; and the oleomargarine case of *Capital City Dairy Co.* v. *Ohio,* 183 U. S. 238.

However, there would seem to be a clear distinction between these cases and the case at bar, these cases being based upon the proposition that, as stated in *Brooks* v. *U. S., supra*:

> "Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty, or the spread of any evil or harm to the people of other states from the state of origin. In doing this, it is merely exercising the power, for the benefit of the public, within the field of interstate commerce."

In the automobile theft cases, the court held that the vehicles of interstate commerce could not be used in furtherance of the crime of theft. In other words, the instrumentalities of interstate commerce cannot be used to place the stolen article beyond the reach of its owner.

The liquor cases are based squarely upon the proposition of the inherent vice of the commodity itself, and so are the Pure Food Law cases.

The wild game case is not analogous to the case at bar, because title to wild game is vested in the state. The state holds it in trust for the benefit of its citizens, and has a clear right to say under what circumstances the citizen may kill and acquire title to the game, and therefore it is within the powers of Congress to prohibit the use of the instrumentalities of interstate commerce in transporting the game out of the jurisdiction of the state when it is killed and captured in violation of the state law.

It is quite obvious, too, that this court went to the extreme limit in some of those cases in upholding them under the power granted Congress by the commerce clause. In fact, we are frank to say that it is our opinion that the effect of some of the acts of Congress upheld by this court is to regulate the purely internal affairs of the state under the guise of regulating interstate commerce.

Counsel for respondents stated to us that they intended to ask this court to overrule its decision in the Child Labor case. We think it would be much more in keeping with the intention of the framers of the constitution to reaffirm the doctrine of the Child Labor case, and, if the occasion arises, frankly overrule any cases which might appear to be in conflict with it. The constitution provides specifically how it should be amended, and those, who are dissatisfied with it, should follow that procedure if they want it amended, instead of imploring the judicial department of the government to do it by judicial construction.

Oil produced in excess of the amount fixed by the state law remains the property of the producer. If the producer has violated a valid law of the state, he is subject to the penalties of the law. Prohibiting shipment of the oil in interstate commerce is merely denying the use of the instrumentalities of commerce to transport a recognized commodity of commerce, the title to which is undisputed. There is no evidence in the record that it would unduly burden interstate commerce, and we all know that the transporting companies are in dire need of business and the revenue derived therefrom. Therefore, it is quite obvious that an act of Congress prohibiting the transportation of such oil in interstate commerce is an attempt on the part of Congress to aid the state in the enforcement of its conservation laws, and thus regulate the production of petroleum—a local matter over which the national government has no jurisdiction.

We take it that no one will argue that crude petroleum is not a lawful article of commerce. This court has said:

> "The general rule to be deduced from the decisions of this court is that a lawful article of com-

merce cannot be wholly excluded from importation into a state from another state where it is manufactured or grown."

Schollenberger v. *Pennsylvania,* 171 U. S. 1, 43 L. Ed. 49.

Point D.

The National Industrial Recovery Act is void because it is an attempt by the national government to usurp powers reserved to the states and the people by the Tenth Amendment to the Federal Constitution.

Ample authorities have already been cited sustaining the proposition that the national government is without power to regulate the internal affairs of the state. In fact, this is conceded. This is a proposition that has been recognized by the sponsors of the National Industrial Recovery Act, as well as almost innumerable acts of similar legislation enacted for the purpose of meeting the present emergency and legislating the nation out of the depression.

Mindful of the limited powers of the national government and at the same time desiring to carry into effect a program demanding united action and cooperation, Congress has sought to confer upon the executive department of the government complete power to regulate and control the internal affairs of the country, and, realizing its lack of authority to do so, has attempted to justify its acts under the guise of regulating interstate commerce, providing for the general welfare and invoking the war powers of Congress, although there is no war.

These facts are so well recognized and known to all informed persons that no proof of them should be required. They should be judicially noticed by the court, and it is then only necessary for the court to decide whether or not Congress is empowered to do these things by a mere statement of its desire to regulate interstate commerce.

To determine the intent of Congress in passing the National Industrial Recovery Act, it is only necessary to briefly refer to the language of the Act itself.

First, Congress declares it to be its policy to remove obstructions to the free flow of interstate and foreign commerce. So far as we know, that has always been the policy of Congress. It at least ought to be. Second, to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups. The commerce clause does not confer this power. Third, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision. However commendable this policy may be, it is an invasion of states' rights.

Hammer v. *Dagenhart,* 274 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1101.

Bailey v. *Drexel,* 259 U. S. 20, 42 S. Ct. 449, 66 L. Ed. 817.

Fourth, to eliminate unfair "competitive practices." This vague term leads us far afield and attempts to give the federal government jurisdiction over local concerns not even hinted at in the commerce clause.

Fifth, to promote the fullest possible utilization of the present productive capacities of industries; sixth, to avoid undue restriction of production (except as may be temporarily required); seventh, to increase the consumption of industrial and agricultural products by increasing purchasing power; eighth, to reduce and relieve unemployment; ninth, to improve standards of labor; and, tenth, otherwise rehabilitate industry and to conserve natural resources.

We have no quarrel with Congress as to the wisdom of these declarations of policy. But we do assert that, in its efforts to carry them into execution, it cannot wipe out the Tenth Amendment to the Federal Constitution, make the states mere provinces of the Department of the Interior, and inject such strength and power into the commerce clause as to leave it the only effective clause of the constitution, and then draw from it the power to regulate and control, to the minutest detail, the business and affairs of every one who produces, mines, manufactures, or consumes articles, some of which flow in the channels of interstate and foreign commerce.

The wisdom of our dual form of government is, of course, a debatable question, but we have it, and it will remain intact until the constitution is amended in the proper way.

This court has said:

> "The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant, or the harm that will come from

> breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half."
>
> *Bailey* v. *Drexel Furniture Co., supra.*

The production of oil in Texas is a private business. The federal government, of course, cannot by a code adopted by a part of the industry and approved by the President fix the amount of oil that a producer may produce from his well, require him to make detailed reports of the amount of his production and the disposition made of it, subject his property to physical examination and inspection, and require him to submit his books and records for examination and audit, without doing violence to both the Fifth and Tenth Amendments to the National Constitution.

This record indisputably shows that respondents, in doing the things enumerated above, had no thought of regulating interstate and foreign commerce, but their sole object was to limit the amount of oil that might be produced in Texas to the amount fixed by the Secretary of Interior and certified by him to the Railroad Commission of Texas. The allowables fixed by the Secretary were adopted by the Commission (R. 66-67) and the respondents were attempting to compel petitioners to comply with those orders and produce from their wells no more than that allotted to them. This is clearly established by the letters of respondent Ryan (R. 70-71), and the various affidavits of petitioners. (R. 67-74.)

The authorities cited under Point A and Point F fully sustain this proposition, and under them the decree of the trial court was right and that of the circuit court of appeals wrong.

Point E.

The national emergency, brought about by the financial depression, did not bestow upon Congress the power to enact the National Industrial Recovery Act.

In the court below, respondents, admitting that "an emergency may not call into life a power which has never lived," but asserting that "nevertheless emergency may afford a reason for the exertion of a living power already enjoyed, *Wilson* v. *New,* 243 U. S. 332 (1917); *Home Building & Loan Association* v. *Blaisdell,* 78 L. Ed. 255 (1934)" (Respondents' Brief Circuit Court of Appeals, page 168) argued "that the existing emergency creates a condition in and affecting interstate commerce which justifies the application of these regulatory measures during the period of the emergency declared by the Congress." (Respondents' Brief, Circuit Court of Appeals, page 166.) And further that "an emergency may create a condition which calls forth the valid exercise of governmental power which under normal conditions would be an unreasonable and arbitrary fiat." (Respondents' Brief, Circuit Court of Appeals, page 168.)

Congress has no power under the Constitution of the United States to prohibit the transportation of crude petroleum and its products in interstate and foreign commerce; it has no power under the constitution to require a producer of oil to render unto it burdensome reports, giving the minutest details of his business; nor to go upon his property, inspect it, his books and records, gauge his old tanks and dig up his pipe lines to ascertain whether he has produced oil in excess of state allowables. *A fortiori* it could not bestow such power upon the President and the Secretary of the Interior. From the constitution, Congress derives no power to say that an oil producer who produces oil in excess of that allotted to him by state regulations shall be an unfair trade practice, and consequently can confer no such power upon the President and the Secretary of the Interior. If the power is not in the constitution, it cannot come from the emergency. Our thought is better expressed by Judge John J. Parker, in his address before the American Bar Association, August 30, 1933, when he said in part:

> "In saying this I would not have you think that I subscribe for a moment to the heresy that unconstitutional acts may be justified because of an emergency. I hold to no such destructive and revolutionary doctrine. It is unthinkable that our fundamental law, which lays down the principles upon which sovereignty is to be exercised, is to be disregarded at the very time when a guide for the exercise of sovereignty is most needed. Our constitutional structure has been erected to stand and protect our people against the danger arising from the exercise of sovereignty, not only when the skies are blue and the sun is shining, but also when the storms come and the depths are moved."
>
> (American Bar Association Journal, Oct., 1933, page 574.)

Emergencies create no power. In emergencies, in panics, in times of peril, when people stampede, when sober judgment is submerged, when expediency seeks to triumph over righteousness and correct principles, then is when we need the safeguards of our Constitution.

Ex parte Milligan, 4 Wall. 2, 18 L. Ed. 281.

Wilson v. *New,* 243 U. S. 332, 37 S. Ct. 298, 61 L. Ed. 755.

Home B. & L. Assn. v. *Blaisdell,* 78 L. Ed. 255, 290 U. S. 398, 54 S. Ct. 231.

Nebbia v. *New York,* 291 U. S. 502, 54 S. Ct. 505.

Point F.

Article I, Section 8, U. S. Constitution, which empowers the Congress to declare war, to raise and support armies, to provide and maintain a navy, and to make laws which shall be necessary and proper for carrying into effect the foregoing powers, does not authorize the Congress to require petitioners to keep their oil underground until such time as the national government may need it in offensive or defensive warfare, without paying petitioners just compensation for it.

We freely concede that the United States Government has the power to wage war and to prepare for it. In the court below respondents argued that under Article I, Section 8 of the Federal Constitution, the federal government had the power to restrict production of petitioners' oil wells so that the oil might be conserved and be available for use in the next war. We contend that the government cannot prepare for war at the expense of the oil producers alone. The burden must be borne by the people as a whole.

The Supreme Court of Texas is the proper tribunal to define the rights of a landowner in Texas to the oil and gas in and under his land, and it has done so. Said that court:

> "Gas and oil in place are 'minerals' and realty, subject to ownership, severance and sale while embedded in the sands and rocks beneath the earth's surface, in like manner and to the same extent as coal or any other solid mineral."

And in the same opinion the court said:

> "But so long as he can reach it and bring it to the surface, it is his absolutely, to sell, to use, to give away, or to squander as in the case of other property."
>
> *Stephens County* v. *Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S. W. 290.

See, also:

Houston & T. C. Ry. Co. v. *East*, 98 Tex. 146, 81 S. W. 279.

Bender v. *Brooks*, 103 Tex. 329, 127 S. W. 168.

Texas Co. v. *Daugherty*, 107 Tex. 226, 176 S. W. 717.

Prairie Oil & Gas Co. v. *State*, 231 S. W. 1088.

It necessarily follows, therefore, that the national government has no more right to confiscate these petitioners' oil for use in war than it has to confiscate their other private property for such use. True, the government may take their oil for the national defense, but it is also true that if it does so it must pay them for it.

The Fifth Amendment so declares.

U. S. v. *Cohen Grocery Co.*, 255 U. S. 81, 41 S. Ct. 298, 65 L. Ed. 516.

U. S. v. *New Rivers Collieries Co.,* 262 U. S. 345, 43 S. Ct. 565, 67 L. Ed. 1014.

Hamilton v. *Kentucky Distillers & Warehouse Co.,* 251 U. S. 146, 40 S. Ct. 106, 64 L. Ed. 194.

Below, the respondents relied upon *U. S.* v. *Gettysburg Electric Ry. Co.,* 160 U. S. 668, 16 S. Ct. 427, but in that case the government conceded that it must pay the owners for the land appropriated.

Point G.

Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is void:

(1) Because Section 3 of the National Industrial Recovery Act, which undertakes to delegate to the President and trade or industrial associations or groups power to promulgate codes of fair competition and give them the force of law, is a delegation of legislative power prohibited by the national constitution;

(2) Because Section 3 of said Act is an attempt upon the part of the Congress to regulate and control local and private business and concerns in violation of the Tenth Amendment to the National Constitution;

(3) Because Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is an attempt upon the part of the President and a part of the Petroleum Industry to exercise powers not granted to them by Section 3 (a) of the National Industrial Recovery Act;

(4) Because Section 4 of Article III of said Code could not become a national law without first having

been introduced as a bill in one of the houses of Congress, then have passed both houses, and last be approved by the President, or reenacted over his veto.

1. Section 3 (a) of the National Industrial Recovery Act provides that "Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the

provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared." (R. 152.)

Paragraph (b) makes an approved code the standard of fair competition for the trade or industry covered by it, and provides that any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of Chapter 2 of this title.

Paragraph (c) provides for injunctions in favor of the government to restrain violations of the Code; and Paragraph (f) imposes a fine, upon conviction, for each violation of the Code of not more than $500.00 for each offense. Paragraphs (d) and (e) are not material here.

Subheadings 1 and 2 have, we think, been sufficiently argued under Points B and D and we pass them without further comment, except as to adopt here as authority for these propositions the authorities cited under Points B and D.

Section 4 of Article III of the Code should be considered in connection with Section 3 of Article III. Section 3 of Article III as it now stands reads as follows:

> "Section 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of antici-

pated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry [and thereupon Section 4 of this Article shall apply]. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.'' (The brackets indicate new matter.)

Section 4 of Article III of the Code as it now stands reads as follows:

> ''Section 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section [and/or Section 3 of Article III of this Code] not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.
>
> If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 3 of this Code in excess of any such quota assigned to him, shall be deemed an un-

fair trade practice and in violation of this Code." (The brackets indicate new matter.)

The words in brackets in Sections 3 and 4 and the last paragraph of Section 4 were omitted from the Code as approved by the President, September 13, 1933. All parties to this suit, however, and the courts below labored under the belief that Sections 3 and 4 contained those provisions, and petitioners were threatened with prosecutions for violating the last paragraph of Section 4. (R. 71-72.) Furthermore, respondents contend that one who produces oil in excess of the allowable fixed by the state agency violates Section 4 of Article III of the Code and may be punished for such violation by fine of not to exceed $500.00 for each offense, and each day such violation continues to be deemed a separate offense. (R. 71-72.) (Sec. 3 (f), N. I. R. A.) The government concedes, now, however, that it has no legal ground upon which to base prosecutions, criminal or otherwise, against respondents for violating the Code prior to September 25, 1934. (Supplemental Memorandum for Respondents, this case, page 2.) But, if respondents produce oil in excess of the amount allotted to them by the State Railroad Commission after September 25, 1934, the government will contend that the violations of the Railroad Commission's order also constitute violations of Section 4, Article III of the Code. Whether any of the respondents have violated the proration orders of the Texas Railroad Commission since September 25, 1934, we do not know. Of what they intend to do in the future we have no knowledge. Many of them, however, inherently believe and have deeply embodied in their nature the doctrine expressed by the Supreme Court of Texas in *Stephens County* v. *Mid-Kansas Oil & Gas Company, supra*, and by Circuit Judge Joseph C. Hutcheson, Jr., in *Macmillan* v. *Railroad Commission*, 51 Fed. (2) 400, when he said:

> "Certainly when a subordinate body like the railroad commission of Texas undertakes as here to deal in a broadly restrictive way with the right of a citizen to produce the oil which under the law of this state he owns, it must be prepared to answer his imperious query, 'is it not lawful for me to do what I will with mine own' by pointing to a clear delegation of legislative power";

and one who assumes that most of them will continue in their efforts to defeat the railroad commission of Texas and the federal government in their persistent efforts to deprive petitioners of their properties and the use of them without due process of law will not go far wrong. It appears that Sec. 4, Article III of the Code, under the authorities cited by the government on page 2 of the supplemental memorandum for respondents, is properly before this court for determination of its validity.

Texas Co. v. *Brown,* 258 U. S. 466, 42 S. Ct. 375.
Pugh v. *McCormick,* 14 Wall. 361, 81 U. S. S. Ct. 789.
Watts, Watts & Co. v. *Unione Austriaca, etc.,* 248 U. S. 9, 39 S. Ct. 1.
American Foundries v. *Tri-City Council,* 257 U. S. 184, 42 S. Ct. 72.

If the court finds that Section 3 of the Recovery Act is a valid enactment of Congress, these provisions of the Code are valid and enforceable against petitioners, who are not parties to the Code, if the statute authorizes such Code.

It is at once apparent from a reading of the above provision of the Code that their purpose is to limit the production of crude oil to the point necessary to *balance it with consumer demand for petroleum products.* They have nothing to do with the regulation of interstate and foreign commerce. Only a violation of the standards of the Code in any transaction in or affecting interstate or foreign commerce is deemed an unfair method of competition in commerce. Thus, the Act, as found by the trial court, does not authorize the adoption and promulgation of a code to limit production of crude oil to balance consumer demand for petroleum products, and the above sections of the Code are void for lack of statutory authority. If the statute does authorize such provisions, both the statute and Code are void under the authorities cited under Points A and F.

We further submit that to permit such a document as the Code of Fair Competition for the Petroleum Industry to become a law of the land, agreed to merely by a part of the industry and approved by the President, without ever having been before the Congress, much less passed by it, is to permit a flagrant violation of Section 7 of Article I of the National Constitution.

Point H.

Regulations IV and VII of the Secretary of the Interior are null and void:

1. Because Section 9 (c) of the National Industrial Recovery Act is void.

2. Because Section 10 (a) of the National Industrial Recovery Act is void.

3. Because said regulations are not authorized by either section of said act.

4. Because said regulations violate rights guaranteed to the petitioners by both the Fourth and Fifth Amendments to the National Constitution.

1 and 2. The constitutionality of Section 9 (c) has already been argued. (Points B, C, D, E and F.)

If Section 9 (c) is void, it necessarily follows that Section 10 (a) which provides that "The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this chapter"; * * * "and any violation of such rule or regulation shall be punishable by a fine not to exceed $500 or imprisonment not to exceed six months, or both," is also void.

3. But the regulations are void whether the law be valid or void.

Regulation IV requires every producer of oil—not transporter—to file a statement under oath, sworn to before any duly authorized state or federal officer, not later than the 15th day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the division, which statement shall contain the following information for the given field involved covering the preceding calendar month: (1) Residence and post-office address of the producer; (2) location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper state agency for both property and wells; (3) the daily production in barrels from each property and well; (4) report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount of storage at each place; and (5) a declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, commission, officer, or any other duly authorized agency of the state in which the petroleum was produced. (R. 44-45.)

Regulation VII provides that all persons, natural and artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigation of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof. (R. 43.)

The amended orders now in effect are not materially different. (Memorandum for respondents herein, pages 4 and 17-20.)

Petitioners, who produce oil and sell it on their leases, refused to comply with the above orders and brought this suit to enjoin respondents from requiring them to do so and to enjoin respondents from prosecuting them to subject them to the fines and penalties prescribed for not doing so by Section 10 (a), N. I. R. A. Unless respondents are enjoined they will proceed with such prosecutions. (R. 71-72.)

It is plainly evident from the information required by the above reports that the regulation of the production of oil—not its transportation in interstate and foreign commerce—is the objective. The Secretary of the Interior seeks to accomplish the prohibited thing under the guise of regulating interstate commerce, the trier of the facts so found. (R. 137.) If there was ever any doubt about it the distinguished Secretary of the Interior dispelled the doubt, speaking to the American Petroleum Institute at Dallas, Texas, Wednesday, November 14, 1934. As reported by the Associated Press, he said, among other things:

> "Our hope has been that this oil question could be worked out, in the main, by industry itself in co-

> operation with the states, with the federal government giving such general and incidental assistance as might be necessary."

And further:

> "Unless this whole question is solved without undue loss of time on a basis that will commend itself to the sound judgment of the people, the federal government may conclude that it is its duty to consider declaring the oil industry to be a public utility."

Further:

> "If you would escape the heavy hand of the government, which, sooner or later, will be charged with the duty of carrying out the grim purpose of the people that such abuses as exist in the oil business shall no longer be tolerated, then set your house in order and do it without delay."

Again:

> "I assure this state and all others that, so far as the federal government is concerned, subject only to its paramount right to prevent the waste of an irreplaceable natural resource, it would be happy to be relieved of any responsibility with respect to the regulation and control of the oil industry in any state."

Furthermore:

> "From a profitless business as a whole when the oil administration took hold, you have been making fair profits. There has also been definite accomplishment as far as labor is concerned. All of you are familiar with the fact that the price of average Mid-Continent crude oil has been $1 a barrel for more than a year and that the steady market

> in this area has resulted in corresponding stability in other districts."
>
> (Longview Daily News, Nov. 14, 1934; Dallas Morning News and Fort Worth Star Telegram, November 15, 1934.)

With commendable frankness, the Secretary of the Interior, in all his public addresses about this subject, has always stated his purpose was to exercise that control over the oil industry in all its phases necessary to stabilize the industry and return it to prosperity.

Does the Secretary say that the federal government would like to be relieved of the duty of regulating interstate and foreign commerce? No, "of any responsibility with respect to the *regulation* and *control* of the oil industry in any state." Well, the National Constitution relieves the federal government of that responsibility, if the government will just obey its simple mandates. Since when was it the *grim purpose* of the people that the price of crude oil be maintained at $1 a barrel, so that they will have to pay correspondingly high prices for the products thereof?

Thus it appears that the administrative officials of the government in their zealous efforts to legislate and regulate the nation out of the depression find only the commerce clause in the constitution and brush aside the Tenth Amendment, as though it were not there.

4. These regulations are also arbitrary and unreasonable, being mere roving, fishing expeditions into the private affairs of private citizens.

In re Pacific Ry. Commission, 32 Fed. 263.

Federal Trade Commission v. *American Tobacco Co.,* 264 U. S. 298, 68 L. Ed. 696, 44 S. Ct. 336.

Interstate Commerce Commission v. *Brimson,* 154 U. S. 447, 14 S. Ct. 1125.

Harriman v. *Interstate Commerce Commission,* 211 U. S. 407, 29 S. Ct. 115.

Ellis v. *Interstate Commerce Commission,* 237 U. S. 434, 35 S. Ct. 645.

And both regulations violate the rights guaranteed petitioners to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment, and from testifying against themselves, under the Fifth Amendment.

Boyd v. *U. S.,* 116 U. S. 619.
Hale v. *Henkel,* 201 U. S. 42.
Silverthorne Lumber Co. v. *U. S.,* 251 U. S. 385.
Carroll v. *U. S.,* 267 U. S. 132.
Gobart Importing Co. v. *U. S.,* 282 U. S. 344.
Weeks v. *U. S.,* 232 U. S. 383.

Point I.

The circuit court of appeals erred in holding that petitioners have an adequate remedy at law and are, therefore, not entitled to injunctive relief.

The circuit court of appeals said:

> "For by reference to Sect. 5 of the Act it appears that the sanctions for violating the Code are but three. Paragraph (b) declares a violation to be an unfair method of competition within the meaning of the Federal Trade Commission Act. If that sanc-

tion be an unlawful one, and should be sought to be applied against complainants before the Federal Trade Commission, they have their remedy in that proceeding. Paragraph (c) provides for injunction proceedings by the district attorney to prevent violation, and a complete remedy against wrong is available there. Paragraph (f) provides a sanction by criminal prosecution, but only when the violation is 'in any transaction in or affecting interstate or foreign commerce.' An indictment or information could not stop at alleging the production of excess oil, but would have to allege with appropriate fulness that it was in a transaction in interstate commerce or affecting it. This sanction is thus tied to and seemingly not intended to exceed the commerce power of Congress. Each such criminal case would depend on its own facts. The provision of the Code thus enforced does not appear to be unconstitutional. Whether any complainant at any time has violated it is more appropriate to be tried in a prosecution of him than in this composite suit in equity. We may say of all three sanctions that an adequate remedy against abuse is afforded in the proceedings indicated by the statute for their respective enforcement, so that a remedy in equity by injunction may not be had." (R. 188.)

The circuit court of appeals also held petitioners are not entitled to injunctive relief against the repeated trespasses of respondents, because there was no showing of irreparable damage or insolvency of the trespassers. (R. 191-192.)

In these holdings the learned court fell into error. The respondents so admit. (Memorandum for Respondents herein, page 3.) And the decisions of this court so hold.

Philadelphia Co. v. *Stimson,* 223 U. S. 605.

Champlin Refining Co. v. *Corporation Commission,* 286 U. S. 210.

Ex parte Young, 209 U. S. 123.

For the convenience of the court, we have included in the appendix, first, applicable parts of the National Industrial Recovery Act; second, applicable parts of the Petroleum Code; third, Regulations IV and VII of the Secretary of the Interior; fourth, reference to articles bearing on the National Industrial Recovery Act.

Conclusion.

In conclusion, we respectfully submit to the court that the record clearly shows that the National Industrial Recovery Act is unconstitutional, and especially Sections 3 and 9 (c) thereof, in the particulars herein set forth, and that the order of the President, dated July 11, 1933, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order, prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a state (R. 37-38); that the order of the President appointing the Secretary of the Interior administrator and the Department of the Interior the federal agency under the Code of Fair Competition for the Petroleum Industry (R. 54); that Section 4 of Article III of said Code; and that Regulations IV and VII of the Secretary of Interior are null and void.

Therefore, the decree of the circuit court of appeals should be reversed, and the decree of the district court should be affirmed.

Respectfully submitted,

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APPENDIX A.

The National Industrial Recovery Act, approved June 16, 1933, c. 90, 48 Stat. 195 (U.S.C. Sup. VII, Title 15, Secs. 701, 702 (b), 702 (c), 703 (a), 703 (b), 703 (c), 703 (f), 709 (c), 710 (a)) provides in part:

> SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.
>
> SEC. 2. (b) The President may delegate any of his functions and powers under this title to such

officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by Section 1 has ended.

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Sec. 9. (c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

Sec. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

APPENDIX B.

Petroleum Code.

Article III.

Production.

Section 1. The President is hereby requested, after such investigation and hearing as is prescribed by, and subject to the limitations contained in, Title 1 of the National Industrial Recovery Act, to limit imports of crude petroleum and petroleum products for domestic consumption to volumes bearing such ratio to the estimated volume of domestic production as will effectuate the purposes of this Code and the National Industrial Recovery Act.

Section 2. Withdrawals of crude oil from storage shall be subject to approval by the Planning and Coordination Committee but for the remainder of 1933 shall be limited in the aggregate to an average not in excess of 100,000 barrels daily. Additions to storage beyond the necessary limits of fluctuations in working stocks shall be made only with the approval of the Planning and Coordinating Committee.

Section 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

Section 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article

I, Section 2 of this Code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code.

Section 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State. If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this Code in excess of any such quota assigned to him shall be deemed as unfair trade practice and in violation of this Code; and, further, persons engaged in the petroleum industry or any branch thereof in any State may adopt a supplemental Code for that State, to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this Code.

APPENDIX C.

The two regulations by the Secretary of the Interior involved in the present litigation read as follows:

IV.

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post-office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.

(3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. [As amended by Order of July 25, 1933.]

VII.

All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73d Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

APPENDIX D.

Articles Bearing on N. I. R. A.

Harvard Law Review, November, 1933, pages 93-95; also, 109-114;

Address of Honorable John J. Parker, United States Circuit Judge, "Is the Constitution Passing?" before the American Bar Association at Grand Rapids, reported in American Bar Association Journal, October, 1933;

John Corbin, The Forum, August, 1933;

Mitchell Dawson, "The Supreme Court and the New Deal," Harper's Magazine, November, 1933;

Paul Hutchinson, The Forum, September, 1933;

Maurice Finkelstein, "The Dilemma of the Supreme Court," The Nation, October, 1933;

James M. Beck, "The NRA Is Unconstitutional," Fortune Magazine, November, 1933;

Howard E. Wahrenbrock, "Federal Anti-Trust Law and the National Industrial Recovery Act," Michigan Law Review, June, 1933;

Honorable Clarence E. Martin, "Shall We Abolish Our Republican Form of Government?" American Bar Association Journal, August, 1933;

Senator Patrick A. McCarran, address to the American Bar Association in Grand Rapids, American Bar Association Journal, October, 1933;

Professor Milton Handler, "The National Industrial Recovery Act," American Bar Association Journal, August, 1933;

Professor Charles E. Clark, "Legal Aspects of Legislation Underlying National Recovery Program," American Bar Association Journal, May, 1934;

Hal H. Smith, "The National Recovery Act: Is It Constitutional?" American Bar Association Journal, May, 1934;

David L. Podell, "Essential Factors in Determining Constitutionality of Recovery Act," American Bar Association Journal, May, 1934; and,

Frederick H. Wood, "Constitutional Aspects of National Recovery Program."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL.,
Appellants,

vs.

A. D. RYAN, S. D. BENNETT and
J. HOWARD MARSHALL,
Appellees.

BRIEF FOR APPELLANTS

I.

THE OPINIONS OF THE COURTS BELOW

The opinion of the district court is reported in the consolidated cases of Amazon Petroleum Corporation et al. vs. Railroad Commission of Texas et al. and Panama Refining Company et al. vs. Ryan et al., 5 Fed.

Sup. 639. (R. 149.) The opinion of the United States Circuit Court of Appeals in these consolidated cases is entitled Archie D. Ryan et al. vs. Amazon Petroleum Corporation et al., 71 Fed. (2) 1. (R. 178-179.) It is the judgment of the United States Circuit Court of Appeals that the appellants seek to have reversed, and the judgment of the district court affirmed.

II.

JURISDICTION

1. Appellants assert: (a) That subsection 9(c) of the National Industrial Recovery Act, approved June 16th, 1933, c. 90, 48 Stat. 195, is unconstitutional and void in that Congress has thereby attempted to delegate to the President the power of legislation; (b) that Regulations IV, V and VII promulgated by Harold L. Ickes, Secretary of the Interior, who was appointed by the President to enforce the provisions of subsection 9(c) of said Act, which regulations were being enforced against appellants by appellees, and criminal prosecutions started by appellees against appellants because of the failure of appellants to comply with such regulations, are void, for the reason that they are not authorized by subsection 9(c) or any other provision of said Act; (c) appellants may not be subjected to criminal procedure or imprisonment and forfeitures or fines and penalties provided for in subsection 9(c) of said Act and said

regulations, for they are producers and refiners of petroleum wholly within the jurisdiction of the State of Texas, and are, therefore, not included within the terms of subsection 9(c) of said Act, and the things required of them by said regulations are not required by subsection 9(c) of said Act. Therefore, appellants were entitled to have the criminal prosecutions against them for the violation of said regulations, as well as the further enforcement of said regulations against them, restrained while they were testing the validity of said regulations. (R. 1.)

2. The jurisdiction of the Supreme Court is invoked under Section 240 of the Judicial Code, as amended by the Acts of February 13th, 1925, and upon the further ground that the decision of the United States Circuit Court of Appeals, in holding that subsection 9(c) of said Act is not an unconstitutional delegation of legislative power to the President and is in all other respects valid, is in conflict with the principles announced by this court in Re Rahrer, 140 U. S. 545; Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Butte City Water Company vs. Baker, 196 U. S. 119; United States vs. Grimaud, 220 U. S. 506; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194; Knickerbocker Ice Company vs. Stewart, 253 U. S. 156; Hampton & Company vs. United States, 276 U. S. 394; Union Bridge Company vs. United States, 204 U. S. 365; St. Louis & Iron Mountain Railway Company vs. Tay-

lor, 210 U. S. 283; Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. 230.

The decision of the United States Circuit Court of Appeals, wherein it held that the attacked regulations are valid and the appellants may be subjected to criminal procedure for the violation thereof, is in conflict with the principles announced by this court in United States vs. Eaton, 144 U. S. 677; United States vs. United Verde Copper Company, 196 U. S. 207; Williamson vs. United States, 207 U. S. 425; United States vs. George, 228 U. S. 15.

The decision of the United States Circuit Court of Appeals, wherein it held that the appellants were not entitled to an injunction against prosecution and the further enforcement of the attacked regulations against them pending the trial as to the validity of said regulations, is also in conflict with the principles announced by this court in Philadelphia Company vs. Stimson, 223 U. S. 606; and Stafford vs. Wallace, 258 U. S. 496.

III.

STATEMENT OF THE CASE

As shown by the opinions of the district court and the Circuit Court of Appeals, this case, while tried separately from that of the Amazon Petroleum Corporation et al. vs. Lon A. Smith et al., which is also pending in this court, being numbered No. 260, yet in disposing of both cases, both the district court and the Circuit Court of Appeals entered but one opinion which is applicable to both cases, as the federal questions in the Amazon case are identical with those raised in this case, with the exception that in the Amazon case an attack is also made upon section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, as approved by the President on August 19th, 1933, under the provisions of the National Industrial Recovery Act. While the issue as to the validity of that provision of the Petroleum Code is not raised by the pleadings in this case, nevertheless the writer is counsel for some of the appellants in that case and as a portion of our argument in this case as to the invalidity of Title I of the National Industrial Recovery Act is applicable to that additional question raised in the Amazon case, we respectfully request the court to consider this brief as our brief in the Amazon case, due to the shortness of the time before these cases are submitted, which we understand from the clerk of the court to be December 10th; and especially in view of the fact that we have not on this date, November 14th, 1934, received a copy of the record in the Amazon case, and received copy of the record in this case only within the last few days.

The appellants, the Panama Refining Company, who is a refiner of crude petroleum, joined by A. F. Anding, who is a producer of petroleum, brought this suit to restrain the appellees, the agents of the Department of the Interior and representatives of the Department of Justice, from prosecuting appellants for their refusal to furnish verified daily reports as to production, sale, and disposition of oil by the producer, and the purchase, transportation, storage, refining, and disposition of the products of oil by the refiner, as required by the attacked regulations. Regulation IV applies to the producer, and Regulation V applies to the refiner. They also attacked Regulation VII, which requires the keeping of books by each of them as to their production, storage, transportation, purchase, sale, and refining of petroleum, and for the inspection thereof by the agents of the Department of the Interior. Appellants had failed to comply with these regulations, and criminal prosecutions had been commenced against them for such failure. Appellee Ryan, in charge of the agents of the Department of the Interior, in enforcing said regulations, under the assertion of power as incident to his authority to enforce the attacked regulations, also went upon the property of appellants, over their objections, gauged their tanks, examined their property, and dug up their pipe lines, which resulted in the destruction of the same. Therefore, this suit was instituted for the purpose of enjoining the further enforcement of said regulations against the appellants and the further trespass upon their property under the claim that such regulations authorized inspection of producing oil wells, pipe lines, refineries, and tanks, as well as the inspection of appellants' books, and to restrain the further prosecution of the appellants for their failure to comply with said regulations pending the suit testing their validity.

Appellants, as grounds for injunctive relief, alleged the invalidity of subsection 9(c) of the National Industrial Recovery Act, and the attacked regulations, which purport to have been promulgated in pursuance of the authority contained in said Act. (R. 1.)

The district court, in his findings of fact and conclusions of law (R. 134), found as a fact that appellant Anding was engaged in the production of oil within the boundaries of the State of Texas, selling the oil so produced within said state; that the appellant Panama Refining Company was engaged in the refining of crude oil within the boundaries of the State of Texas, and all its purchases of crude oil, the transportation, storage, and refining thereof, were confined within the boundaries of the State of Texas, and that only a portion of its refined products were shipped into interstate commerce.

The court concluded that the business of the appellants was intrastate in character and that they, therefore, did not come within the operation of subsection 9(c) of said Act, and while concluding that it was unnecessary to determine the question as to the validity of subsection 9(c) of said Act, he held that, conceding the same to be valid, the attacked regulations sought to subject the appellants to the operation of said Act and were consequently void and of no force and effect, and the appellants were entitled to an injunction against the further enforcement of said regulations against them, and the further interference by the agents of the Department of the Interior, acting under the purported authority of said regulations, with the appellants in carrying on their business of producing, storing, and refining oil, and the transportation thereof in intrastate commerce. A decree in accordance with these findings and conclusions was entered by the district court (R. 33), which decree was reversed by the United States Circuit Court of Appeals and the cause remanded to the district court with directions to dismiss the bill. (R. 191.) It is, therefore, to reverse the decree of the United States Circuit Court of Appeals that this proceeding is prosecuted.

POINTS RELIED UPON FOR REVERSAL

POINT A

The United States Circuit Court of Appeals erred in holding that subsection 9(c) of Title I of the National Industrial Recovery Act is a valid act of Congress, because it is invalid for the following reasons, which, for convenience we will discuss as propositions:

FIRST PROPOSITION: Title I of the National Industrial Recovery Act is invalid and must be rejected in its entirety because it is an attempt upon the part of Congress to regulate intrastate, as well as interstate and foreign, commerce; and the provisions relating to interstate and foreign commerce are so interrelated with and dependent upon those provisions regulating intrastate commerce that they cannot be separated therefrom; but, if capable of separation, such provisions, standing alone, would not be consistent with or carry out the purpose of Congress in enacting the Act as manifested in the preamble of the Act declaring the policy of Congress and the results sought to be obtained by such enactment.

SECOND PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that it is a delegation by Congress to the President of power to prohibit, at his discretion, transportation in interstate and foreign commerce of oil or the product thereof that may be produced or withdrawn from storage in excess of the law of any state, which commodities are ordinary commodities of commerce and harmless in themselves. This prohibition Congress itself is without power to effect, for it is not competent for Congress, under the commerce clause of the Constitution, to enact an interstate and foreign commerce regulations, leaving the effect thereof dependent upon the action of the several states or the agencies thereof.

THIRD PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that Congress has delegated to the President the power to prohibit, at his discretion, the transportation into interstate and foreign commerce of the commodities referred to in the Act, and provides for the punishment of any one who violates any order of the President promulgated under said subsection. However, Congress does not lay down any rule, standard, or criterion to guide or limit the President in the orders that he may promulgate under said subsection of the Act; but leaves him or his nominees free to promulgate and enforce any order that he or his nominees may think necessary and needful to prohibit the transportation into interstate and foreign commerce of the commodities referred to in the Act and without any requirement as to their uniformity or applicability throughout the Union. The President, or his nominees, under the provisions of the Act, may subject any one who violates any order of the President or his nominees to criminal procedure for the violation of such order. Therefore, the effect of this Act is to delegate to the President not only the power to regulate interstate and foreign commerce at his discretion, but it also delegates to him and his nominees the power to create and define offenses against the United States.

FOURTH PROPOSITION: Subsection 9(c) purports to be simply a prohibitory statute to become effective as the will of Congress upon the order or proclamation

of the President putting the same into effect, and purports to prescribe a punishment for the violation thereof. Yet such Act is too indefinite and uncertain as a penal statute, as it does not classify or define, with any degree of certainty, those who are subject to the operation of the Act and may be punished for the violation thereof. That is, it does not define who is the transporter of the prohibited commodities in interstate and foreign commerce, the one who produces the oil in excess of the state law and sells it and delivers it to a refiner within the state of its production, knowing that it will be refined into products and such products transported into interstate and foreign commerce; or the refiner that sells such products and delivers them to the buyer at the railroad of the interstate carrier within the state of the production of the oil; or the buyer who causes the products to be transported from such state of their production into interstate commerce; or the carrier that transports the products from the state of their production into another state.

ARGUMENT UNDER FIRST PROPOSITION,

POINT A

Title I of the National Industrial Recovery Act is too lengthy to set out herein, therefore it is shown in full in Appendix A. Section 1, or the preamble of the Act, shows clearly that Congress had in mind and intended by Title I of the Act to provide a program for the rehabilitation of industry in the several states of the Union, and that it had in mind and contemplated that this could be done by increasing wages of those who labor in industry, thereby increasing the purchasing power of the country; and that in order for industry to pay such increased wages, the elimination of competition in industry must be effected. Therefore, with these laudable purposes in mind, it entered upon the consideration and enactment of this remarkable legislation.

An examination of the various sections and subsections of Title I of this Act immediately discloses that there are only two provisions, namely, subsections 3(e) and 9(c), that make any direct reference to the regulation of that which is purely interstate and foreign commerce; all of the remaining provisions deal with the promulgation of codes, agreements, and licenses for the regulation and government of every conceivable kind and character of business, and no attempt is made by Congress to differentiate between that which is intrastate and interstate, neither is there any attempt to limit the federal regulations to purely interstate transactions that might be had by those industries that would come under the operation of the codes, licenses, and agreements provided for and authorized by the Act. Congress has not only failed to expressly limit the operation of the Act to interstate and foreign transactions, but the Act shows an avowed purpose on the part of Congress to regulate, supervise, and control matters clearly beyond its jurisdiction. As an illustration, it is provided in subsection 7(a) that every code, agreement, or license approved or issued under the provisions of the Act shall contain a stipulation "that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President." It is not contended and could not be successfully asserted that this provision was intended to be inserted in the codes covering only those businesses that were purely interstate in their character, for, as a matter of fact, and of which the court will take judicial knowledge, this provision has been inserted in the codes regulating the production of oil, the mining of coal, and the manufacture of articles, the regulation of which are all beyond the power of Congress; and the President has, as a matter of fact, prescribed the hours of labor, the minimum wage, and the conditions of employment for such industries. Therefore, since Congress has not in any wise limited the operation of Title I of the Act to those industries or transactions that come within its jurisdiction, or limit the President in his regulation and supervision of industry to those within the jurisdiction of federal control; and since the regulations authorized by the Act, which could apply to interstate transactions, are not separable from those that apply to intrastate transactions, as they are all dependent upon each other, the conclusion necessarily follows that all of the provisions of Title I of the Act, with the possible exception of subsections 3(e) and 9(c), must be rejected. Employers Liability Cases, 207 U. S. 490; Pollack vs. Farmers Loan & Trust Company, 158 U. S. 636.

We assume that counsel for the appellees will contend that in as much as the Act provides in subsection 3(f) that the punishment for the violation of a code, agreement, or license, is limited to those transactions in violation of such code, agreement, or license, that are in "or affecting interstate or foreign commerce," that Congress intended to limit the operation of the Act to only those transactions within its jurisdiction. But it will be readily seen that this subsection does not assure any such limitation in the sense contemplated by the Constitution, for practically all transactions have an indirect effect upon interstate commerce. In the instant case, counsel for appellees contend by their answer to the appellants' bill of complaint (R. 23), that the production of oil in the East Texas oil field affects the commerce of oil in other states. That is the Government's construction placed upon the provisions of the Act and was undoubtedly the construction placed upon it by Congress when it enacted the Act. Nevertheless, it has been repeatedly held that such an effect upon commerce is indirect and does not bring such matter within the regulatory power of Congress. United Leather Workers vs. Herkert, 265 U. S. 457; Field vs. Barber Asphalt Company, 194 U. S. 618. In the case last cited, at page 623, the court said:

> "In this day of multiplied means of intercourse between the states, there is scarcely any contract which cannot, in a limited or remote degree, be said to affect interstate commerce. But it is only direct interference with the freedom of such commerce that brings a case within the exclusive domain of federal legislation."

Now, then, if all of the provisions of Title I of the Act must be rejected, with the exception of subsections 3(e) and 9(c), would Congress, in view of its declared purpose of enacting the Act and the result contemplated to be obtained therefrom as is shown by the preamble, have enacted these two subsections with all of the other provisions eliminated? Clearly it would not.

Subsection 3(e), in effect, authorizes the President to exclude the import of an article or articles, upon complaint made to him by an industrial or labor organization that such imports are adversely affecting the carrying out of the codes or agreements promulgated under the Act, and are defeating the declared policy of Congress as expressed in the preamble of the Act. Therefore, the provisions of this subsection, which relate to foreign commerce, which is within the regulatory power of Congress, are so dependent upon and interrelated with those provisions of the Act which are clearly beyond the regulatory power of Congress, that they are inseparable, and, consequently, this provision must also be rejected.

Subsection 9(c) authorizes the President to prohibit the transportation in interstate and foreign commerce of any petroleum or the products thereof produced or withdrawn from storage in violation of any state law or valid rule or regulation of any agency of the state, and prescribes the punishment for the violation of any order made by the President under this subsection. It is clear that Congress, in delegating this power to the President, contemplated that the exercise of such power might be required by the President in carrying out the general scheme of rehabilitation of industry, as contemplated by Title I of the Act. It is equally clear that Congress would not have enacted this provision with all the other provisions of Title I of the Act eliminated, for if it had been the intention of Congress that it should be unlawful to transport the commodities referred to into interstate and foreign commerce, it would have said so in plain and unambiguous language, and prescribed the penalty for the violation of the Act. This it has not done. It has expressed its will in no manner whatsoever. When this provision left the hands of Congress it was a mere nullity and would have continued a mere nullity to this date but for the exercise of the discretionary power which was conferred by Congress upon the President. Therefore, the conclusion is inescapable that Congress intended subsection 9(c) to be a part of the general program looking to recovery, and it, too, must fall with the other provisions of Title I of the Act.

In Pollack vs. Farmers Loan & Trust Company, 158 U. S. at page 636, it is said:

> "It is elementary that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. And in the case before us there is no question as to the validity of this act, except sections twenty-seven to thirty-seven, inclusive, which relate to the subject which has been under discussion; and as to them we think the rule laid down by Chief Justice Shaw in Warren v. Charlestown, 2 Gray 84, is applicable, that if the different parts 'are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.' Or, as the point is put by Mr. Justice Matthews in Poindexter v. Greenhow, 114 U. S. 270, 304: 'It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts

are so distinctly separable that each can stand alone, and where the court is able to see, and to declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute, for the law intended by the legislature, one they may never have been willing by itself to enact.' And again, as stated by the same eminent judge in Spraigue v. Thompson, 118 U. S. 90, 95, where it was urged that certain illegal exceptions in a section of a statute might be disregarded, but that the rest could stand: 'The insuperable difficulty with the application of that principle of construction to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia the statute is made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the Legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions'."

ARGUMENT UNDER SECOND PROPOSITION,

POINT A

SECOND PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that it is a delegation by Congress to the President of power to prohibit,

at his discretion, transportation in interstate and foreign commerce of oil or the product thereof that may be produced or withdrawn from storage in excess of the law of any state, which commodities are ordinary commodities of commerce and harmless in themselves. This prohibition, Congress itself is without power to effect, for it is not competent for Congress, under the commerce clause of the Constitution, to enact an interstate and foreign commerce regulations, leaving the effect thereof dependent upon the action of the several states or the agencies thereof.

Subsection 9(c) authorizes the President to prohibit the transportation into interstate and foreign commerce of petroleum or the products thereof produced or withdrawn from storage in excess of that permitted by any state law or valid rule or regulation of any state agency. The effect of this Act and the President's proclamation issued in pursuance thereof prohibiting the movement into interstate and foreign commerce of the commodities referred to, is, of course, to prohibit the movement in such commerce of petroleum that has been produced by a producer in excess of that permitted by the law or regulation of a state, or oil that has already been produced and placed in storage and withdrawn from such storage at a greater rate or in greater quantities than that permitted by a law or order of a state agency. For an illustration, the present order of the Railroad Commission of Texas prohibits a producer of oil in the East

Texas oil field from producing in any twenty-four hours more than one-sixth of one per cent of what his well is capable of producing in twenty-four hours. Under this rule, the average oil producer in the East Texas oil field is permitted to produce about twenty-five barrels a day from each of his wells. Ordinarily it requires about ten minutes for the producer to produce the daily permissible amount. Thus, if any producer on any day should let his well flow a few minutes longer than necessary to produce the permissible production and thereby produce thirty barrels on that day, the extra five barrels would be oil that was produced in excess of the order of the Railroad Commission of the state, and, accordingly, under the provisions of subsection 9 (c), the producer could not transport this extra oil or the products thereof into interstate or foreign commerce. We assume that the court will take judicial knowledge of the fact that the extra five barrels of oil that was produced is of exactly the same quality and character as the twenty-five barrels that the producer was permitted to produce, and that the refined products therefrom will be identical with those products manufactured from the permissible production. We also assume that the court will take judicial knowledge that oil or the products thereof are not deleterious commodities or harmful in themselves, but are innocuous articles of commerce. If we are correct in these assumptions, then upon what theory has Congress the power to exclude these extra five barrels of crude oil or the products thereof from the channels of interstate and foreign commerce?

It is true, this court has sustained acts of Congress closing the channels of interstate commerce to impure foods and drugs, which were harmful in themselves, impairing the health and morals of those that used them, as well as the transportation of women for immoral purposes, and stolen automobiles. The Lottery Case (Champion vs. Ames), 188 U. S. 321; Hipolite Egg Company vs. United States, 220 U. S. 45; Caminetti vs. United States, 242 U. S. 470; Brooks vs. United States, 267 U. S. 432.

These acts were sustained upon the theory that the people of the adjoining states should be protected and that Congress had authority to close the channels of interstate commerce so as to confine these nefarious and harmful practices to the states of their origin. And, again, this court sustained an act of Congress prohibiting the shipment of intoxicating liquor from one state into another when intended for use contrary to the latter's laws. Clark Distilling Company vs. Western Md. Railway Company, 242 U. S. 311. The theory of the act of Congress in this case was to protect the people of a state, who had barred the use of intoxicating liquor in such state, from being imposed upon by the people of other states where the use of intoxicating liquor was permitted. But we have been unable to find any case where this court has ever intimated that Congress has the power, under the commerce clause of the Constitution, to prohibit the movement of a commodity, which is harmless in itself, out of a state because such commodity was produced in violation of a law of that state, in order to assist such state in the enforcement of its own laws. The holding of this court in Knickerbocker Ice Company vs. Stewart, 253 U. S. 156, appears to be that Congress cannot extend the power granted it by the commerce clause of the Constitution to the extent of prohibiting the transportation into interstate and foreign commerce of innocuous articles. The commerce clause of the Constitution contemplates the regulation of interstate and foreign commerce by the Federal Government so that the rules governing the same shall be uniform and apply throughout the Union, in order that no state may erect a barrier that would be a burden upon or impede such commerce. Panama Refining Company vs. Ryan, 5 Fed. Sup. 639; Hammer vs. Dagenhart, 247 U. S. 251.

Therefore, the effect and only effect of subsection 9 (c) is to prevent the commerce in oil and the products thereof produced in Texas, from moving into interstate and foreign commerce, except in such quantities as the Railroad Commission of Texas may, from time to time, determine should be moved in that commerce. It follows, then, that the commerce in oil and the product thereof that are produced and manufactured in the State of Texas is, by this Act, made to depend upon the will of the Railroad Commission of Texas, which defeats the very purpose of delegating to the Federal Government the power to regulate interstate and foreign commerce. Vance vs. Vandercook, 170 U. S. 442; Knickerbocker Ice Company vs. Stewart, 253 U. S. 156.

If the quantity of oil and the products thereof that can move in interstate and foreign commerce from the State of Texas is dependent upon the will of the Railroad Commission of Texas, it follows that the several states have the power and authority to set up other agencies limiting the amount of wheat, corn, sheep, hogs, cattle, and dairy products that may be produced in any state in any given period. Thus, with the aid of Congress, such as in this case, the states are empowered to completely control every article of commerce. It is a matter of history that it was for the purpose of preventing such control by the states that the commerce clause was made a part of the Constitution.

In Kidd vs. Pearson, 128 U. S. 1, it is said:

> "It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulations against conflicting and discriminating state legislation."

In view of the purport of subsection 9 (c) and a consideration of the extent to which Congress is authorized to go under the commerce clause of the Constitution, it must be concluded that there is no authority vested in Congress to exclude from the channels of interstate commerce innocuous commodities simply because they may have been produced in excess of that permitted by a state law or regulation.

ARGUMENT UNDER THIRD PROPOSITION,

POINT A

THIRD PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that Congress has delegated to the President the power to prohibit, at his discretion, the transportation into interstate and foreign commerce of the commodities referred to in the Act, and provides for the punishment of any one who violates any order of the President promulgated under said subsection. However, Congress does not lay down any rule, standard, or criterion to guide or limit the President in the orders that he may promulgate under said subsection of the Act; but leaves him or his nominees free to promulgate and enforce any order that he or his nominees may think necessary and needful to prohibit the transportation into interstate and foreign commerce of the commodities referred to in the Act and without any requirement as to their uniformity or applicability throughout the Union. The President, or his nominees, under the provisions of the Act, may

subject any one who violates any order of the President or his nominees to criminal procedure for the violation of such order. Therefore, the effect of this Act is to delegate to the President not only the power to regulate interstate and foreign commerce at his discretion, but it also delegates to him and his nominees the power to create and define offenses against the United States.

That Congress cannot delegate to the President or any one else its power to make a law, has been stated many times by this court as a principle that must be adhered to if our system of government is to endure. In Re Rahrer, 140 U. S. 545; Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194; Butte City Water Company vs. Baker, 196 U. S. 119; Knickerbocker Ice Co. vs. Stewart, 253 U. S. 156. Therefore, the action of Congress in delegating to the President the power to prohibit, in his discretion, the transportation into interstate and foreign commerce of certain innocuous commercial commodities and authorizing the punishment of any one who should violate any order that the President might make, would seem to be in conflict with the principle that this court has so often stated must be maintained as necessary to the perpetuation of our constitutional form of government.

We assume that it will again be stated by counsel, as they have often stated before, that this court has never held an act of Congress invalid because of the delegation of legislative power to the President. We answer that statement by asserting that never before in the legislative history of this government has Congress attempted to surrender the legislative functions of the government to the President. In every case decided by this court in which the act of Congress was sustained against an attack upon its unconstitutionality because of alleged delegation of legislative power, the court found that the acts manifested the policy or will of Congress with reference to the subject regulated and pointed out that Congress has legislated on the subject so far as was reasonably practical, and, from the necessities of the case, was compelled to leave to the discretion of the executive department only the matter of filling in the details or the finding of facts, upon the ascertainment of which the will of Congress was to become effective; and to the discretion of the executive department as to the administration of the act of Congress to bring about the result pointed out by the act. In Re Rahrer, 140 U. S. 545; Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194; Butte City Water Company vs. Baker, 196 U. S. 119; Knickerbocker Ice Company vs. Stewart, 253 U. S. 156. In the act under consideration, wherein has Congress expressed its will to any extent? In prohibiting the transportation of certain Commodities into interstate and foreign commerce, what is there that Congress could not legislate upon fully and express its will in every detail so that the law would be full and complete when it left its hands, and become effective and enforceable as the will of Congress when approved by the President? The taking effect of legislation of this character could not possibly be contingent upon the happening of an event or the ascertainment that certain facts exist. Therefore, in legislation of this character there is nothing to leave to the President except the approval of the act and its enforcement. The conclusion, therefore, must be that since Congress did not exercise its discretion or express its will as to whether the commodities mentioned should or should not be excluded from the channels of interstate and foreign commerce, that it intended to delegate to the President its power to exclude such commodities from such commerce, such power to be exercised by the President at his discretion. The President himself construed the Act to have this effect, for he did not elect to exercise the power delegated to him by Congress until July 11th, 1933, nearly a month after the Act had been approved. If this Act is not a delegation by Congress to the President of its power, to be exercised at his discretion, what was the effect of the Act during the period from June 16th, 1933, when it was approved, and July 11th, 1933, when the President elected to exercise the power delegated to him, by issuing a proclamation prohibiting the transportation in interstate and foreign commerce of oil or the products thereof that was produced or withdrawn from storage in violation of any state law or rule or regulation of an agency of the state? Was the Act, during that period, full, complete, and enforceable as the act of Congress? Could any one have been sent to jail under its provisions for having transported in interstate and foreign commerce the commodities referred to in the Act? Certainly these questions must be answered in the negative. Then what was the effect of the Act? It could not possibly be anything other than a mere authorization by Congress to the President permitting him to use its power at his discretion to prohibit the transportation in interstate and foreign commerce of the commodities referred to in the Act, and to subject to criminal prosecution any one who violated whatever order he might make in using the power delegated to him. If we are correct in our conclusion as to the necessary effect of this Act, then it is unquestionably repugnant to Article I, Section 1 of the Constitution. The power to regulate interstate commerce and the power to regulate maritime commerce were delegated by the states to the federal government for the same reason, that is, the object of the grant was to commit direct control to the federal government so as to relieve such commerce from unnecessary burdens and disadvantages incident to discordant state legislation; and to establish, so far as practical, harmonious and uniform rules applicable throughout every part of the Union. In Knickerbocker Ice Company vs. Stewart, 253 U. S. 156, the court rejected an act of Congress which authorized the application of workmen's compensation acts of the several states as the basis for recovery for injuries sustained by one engaged in maritime commerce. In holding the act void, this court said:

> "Having regard to all of these things, we conclude that Congress undertook to permit application of workmen's compensation laws of the several states to injuries within the admiralty and maritime jurisdiction; and to save such statutes from the objections pointed out by Southern Pacific Company vs. Jensen, 244 U. S. 205. It sought to authorize and sanction action by the states in prescribing and enforcing, as to all parties concerned, rights, obligations, liabilities, and remedies designed to provide compensation for injuries suffered by employees engaged in maritime work. And, so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction and remedies for their enforcement, arises from the Constitution as above indicated. The definite object of the grant was to permit direct control to the federal Government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practical, harmonious and uniform rules applicable throughout every part of the Union. Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and es-

> sential international and interstate relations the latter may not be repealed, amended, or changed, except by legislation, which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it to be dealt with according to its discretion—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated but actually established—it would defeat the very purpose of the grant. See Sudden & Christianson vs. Industrial Accident Commission, 188 Pac. Rep. 803. Congress cannot transfer its legislative power to the states—by nature this is non-delegable. In Re Rahrer, 140 U. S. 545, 560; Field vs. Clark, 143 U. S. 649, 692; Buttfield vs. Stranahan, 192 U. S. 470, 496; Butte City Water Company vs. Baker, 196 U. S. 119, 126; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194, 214."

As Congress cannot delegate to the President its power to regulate interstate commerce, much less can it delegate to him the power to create and define crimes or offenses against the United States. This it has attempted to do by this Act by providing that any one violating any order made by the President under this Act shall be punished by a fine not to exceed One Thousand Dollars, or imprisonment not to exceed six months, or both.

> "An offense which may be the subject of criminal procedure must be an act committed or omitted in violation of a public law either forbidding or commanding it." United States vs. Eaton, 144 U. S. 677.

In Donnelly vs. United States, 276 U. S. 512, it is said:

> "There are no common law crimes against the government (United States vs. Eaton, 144 U. S. 677); each case involves the construction of the statute to determine whether the acts or omissions of the accused are denounced as punishable. And regard is always to be had to the familiar rule that one may not be punished for a crime against the United States unless the facts shown plainly and unmistakably constitute an offense within the meaning of the act of Congress. United States vs. Lacher, 134 U. S. 624; Todd vs. United States, 158 U. S. 278; Fasulo vs. United States, 272, U. S. 620."

In the case of Interstate Commerce Commission vs. Brimson, 155 U. S. 4, Justice Brewer, in his dissenting opinion, in which the Chief Justice and Justice Jackson concurred, said:

> "Suppose a law was enacted making criminal the refusal to answer questions put by a commission * * * Would it not be necessary that the statute de-

> fine the questions or at least the scope of the questions to be asked? Would not an act be void for indefiniteness and lack of certainty which simply made criminal the refusal to answer relevant questions, in any proper investigation carried on before a commission? * * * Could it be left to the commission to select the matter of investigation, determine the scope of the inquiry, and thus, as it were, create the crime?"

In United States vs. Maid, 116 Fed. 650, it is said:

> "A department regulation may have the force of law in a civil suit to determine property rights, * * * and yet be ineffectual as the basis of a criminal prosecution. United States vs. Eaton, 144 U. S. 677. The Supreme Court of the United States in the case last cited marks the distinction thus: 'Regulations prescribed by the President and by heads of departments under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them; and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense.' The obvious ground of said distinction is that to

> make an act a criminal offense is essentially an exercise of legislative power which cannot be delegated; while the prescribing by the President or head of a department, thereunto duly authorized, of a rule without penal sanctions, to carry into effect what Congress has enacted, although such rule may be as efficacious and binding as thought it were a public law, is not a legislative but ministerial function."

In United States vs. Grimaud, 220 U. S. 506, the court laid down the rule as to the necessary statutory authority for a regulation in order to subject one to criminal procedure for the violation of such regulation, and as to this the court said that the executive officer could not make any and all regulations that he might deem necessary or needful for the purpose of carrying out the act, but that the regulations must be within the circle prescribed by Congress, or, in other words, they must be in conformity with the rule or criterion laid down by Congress to guide him in the making of such regulations. Why? Because a regulation of the executive department that would subject one to criminal procedure for its violation, which is not within the limits prescribed by Congress and in accordance with the rule or standard prescribed by Congress, would itself be legislation creating an offense. In United States vs. Cohen Grocery Company, 255 U. S. 88, Chief Justice White quoted with approval a statement of the lower court which is as follows:

> "Congress alone has the power to define crimes against the United States. This power cannot be delegated."

Since in the act under consideration, Congress has prescribed no limitation within which the President may make rules and regulations, and has laid down no rule or standard that he is to follow, but leaves him free to promulgate any rule or regulation that he or his nominees may think necessary in the exercise of the power delegated to him, we must conclude that Congress intended that the President should be free to act in its place and stead in the making of any and all rules and regulations that he might deem necessary and without any limitations placed thereon by Congress, Congress supplying only the power to inflict the punishment for the violation of such rules that he may make. This is undoubtedly a delegation of legislative power to the executive department in its most acute form, and, consequently, the Act is void.

ARGUMENT UNDER FOURTH PROPOSITION,

POINT A

FOURTH PROPOSITION: Subsection 9(c) purports to be simply a prohibitory statute to become effective

as the will of Congress upon the order or proclamation of the President putting the same into effect, and purports to prescribe a punishment for the violation thereof. Yet such Act is too indefinite and uncertain as a penal statute, as it does not classify or define, with any degree of certainty, those who are subject to the operation of the Act and may be punished for the violation thereof. That is, it does not define who is the transporter of the prohibited commodities in interstate and foreign commerce, the one who produces the oil in excess of the state law and sells it and delivers it to a refiner within the state of its production, knowing that it will be refined into products and such products transported into interstate and foreign commerce; or the refiner that sells such products and delivers them to the buyer at the railroad of the interstate carrier within the state of the production of the oil; or the buyer who causes the products to be transported from such state of their production into interstate commerce; or the carrier that transports the products from the state of their production into another state.

In United States vs 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663, Judge Sanborn said:

> "An offense which may be the subject of criminal procedure must be an act committed or omitted in violation of the public law either forbidding or commanding it. 4 Blk. Com. 5. A penal statute which creates and denounces a new offense, and the act

> under consideration is such a statute, may not be lawfully extended by either executive or judicial construction to classes beyond its terms. Men must not be punished unless they fall clearly within the class of persons specified as punishable by such a law. The definition of offenses, the classification of offenders, and the prescription of the punishment they shall suffer, are legislative, and neither executive nor judicial, functions. And forfeitures, fines, and penalties may not be prescribed, imposed, or inflicted, for the violation of a regulation of an executive department without previous legislative prescription."

In Todd vs. United States, 158 U. S. 282, it is said:

> "It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and no act, however wrongful, can be punished under such a statute unless clearly within its terms. 'There can be no constructive offenses and before a man can be punished, his cause must be plainly and unmistakably within the statute.' United States vs. Lacher, 134 U. S. 624; Endlich on Interpretation of Statutes, Sec. 329, 2nd Edition; Pomeroy's Sedgewick on Statutory and Constitutional Construction, 288."

In view of these decisions, it would seem that there can be no question but that the Act under consideration is invalid, for Congress has not created or defined an offense or classified the offenders. The matter of the creation of the offense and the classification of the offenders is left to the President; all that Congress has done is denounce as a crime and prescribe the punishment for the doing or failure to do that which the President may require to be done or prohibit from being done.

POINT B

The United States Circuit Court of Appeals erred in holding that Regulations IV, V, and VII, promulgated by Harold L. Ickes, Secretary of the Interior, for the purpose of enforcing subsection 9(c) of the National Industrial Recovery Act, are valid and enforceable against the appellants and that they may be subjected to criminal procedure for failure to comply therewith.

The appellants attack the validity of Regulation IV, V, VII of the regulations promulgated by Harold L. Ickes, under the purported authority of subsection 9(c) of the National Industrial Recovery Act, which attacked regulations are set out in full in Appendix B.

Regulation IV, in effect, provides that every oil producer must file a verified daily report with the Bureau of Investigation of the Department of the Interior, showing the location of his oil wells, the amount of oil produced therefrom, and the disposition thereof, giving the name of the purchaser and the pipe line company taking the oil from his wells. Said report must further contain an affidavit by the producer that he has not produced any oil from his wells in violation of a state law or any valid rule or regulation of any agency of the state.

Regulation V, in effect, provides that every refiner must file daily verified reports with said Bureau of Investigation showing the amount of oil that it purchases each day, from whom purchased, and the disposition it has made thereof, which report shall contain an affidavit that the oil so purchased by said refiner was not produced in violation of any state law or valid rule or regulation of any agency of the state.

Regulation VII provides that every producer and refiner shall keep accurate books as to his transactions with reference to the production, transportation, refining, and disposition of oil and the products thereof, and that such books shall at all times be open for inspection by the agents of the Bureau of Investigation of the Department of the Interior.

In addition to requiring compliance with these regulations, appellee Ryan and his agents asserted the authority to and did go upon the property of the appellants, gauge their tanks, and inspect their property, and dig up their pipe lines and destroy the same. This right of visitation and inspection was claimed as incidental to their right to enforce the attacked regulations.

Appellants, in their bill of complaint (R. 1), attacked the validity of these regulations, asserting that even though subsection 9(c) were valid, there was no authority contained therein authorizing said regulations, and especially appellants could not be subjected to criminal procedure for failure to comply with the regulations because the things required by them were not required by the Act of Congress. As shown in the record, the appellees had already, before the filing of the amended bill of complaint, commenced criminal prosecutions against appellants because of their failure to comply with the regulations in question.

Of course, it cannot be contended that there is any express authority on the part of Congress for the regulations under consideration. But it will be contended that the power to promulgate and enforce these regulations is implied from the power to enforce subsection 9(c).

In United States vs. 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663, it is said:

> "Implied authority in an executive officer of a department to repeal, extend, or modify an act of Congress may not be lawfully inferred from authority to enforce it, and a regulation of the Secretary of the Treasury, or any other executive officer, made under legislative authority to make rules to enforce an act of Congress, which has the effect to subject classes of property to forfeiture and classes of persons to fines and penalties under the

> act, that are not included therein by the terms of the law, is unauthorized and void. United States vs. 200 Barrels of Whiskey, 95 U. S. 571; United States vs. Eaton, 144 U. S. 677; Williamson vs. United States, 207 U. S. 425; United States vs. Grimaud, 220 U. S. 506; St. Louis Merchants Bridge Railway Company vs. United States, 188 Fed. 191; United States vs. Keitel, 157 Fed. 396; United States vs. 3 Barrels of Whiskey, 77 Fed. 963; United States vs. Manion, 44 Fed. 800; United States vs. Hoover, 133 Fed. 950; United States vs. 1 Package of Distilled Spirits, 88 Fed. 856."

From the face of the regulations, it is clear that by them an attempt was made to subject to the operation of the Act classes of persons and property that were not included within the terms of the Act, for they deal with matters that are purely local. The production of oil and the refining of the same is not commerce, and the purchase, transportation, and storage of oil is not interstate commerce until the same is tendered to a carrier for interstate transportation. Champlin Refining Co. vs. Corporation Commission, 286 U. S. 210; Hammer vs. Dagenhart, 247 U. S. 251. Therefore, the regulations under consideration have no relation to the Act of Congress, unless it may be said that by compliance with the regulations the agents of the Department of the Interior charged with the enforcement of the Act could better enforce it. But we have not yet reached that stage of government where citizens can be compelled by regulations to assist the officers of the government in detecting crime.

It will be seen that these regulations apply to and affect only the East Texas and Oklahoma City oil fields. If they have any support, the foundation therefor must be found in the commerce clause of the Constitution. Yet that clause has many times been interpreted by this court as conferring upon Congress the power to make rules and regulations as to the movement of interstate and foreign commerce so that the rules governing such transportation shall be equal and uniform and apply uniformly throughout the Union. Kidd vs. Pearson, 128 U. S. 1; Knickerbocker Ice Company vs. Stewart, supra; Panama Refining Company vs. Ryan, supra. In Kidd vs. Pearson, supra, it is said:

> "It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states, was to insure uniformity of regulations against conflicting and discriminating state legislation."

In Panama Refining Company vs. Ryan, supra, the court, in discussing the regulations that are here under consideration, said:

> "The Supreme Court, again, in the case of County of Mobile vs. Kimball, 102 U. S. 692, laid down the

> rule as to the constitutional limitations of Congress under the commerce clause, in which it held that the power of Congress to regulate interstate commerce is unlimited, but that in regulating commerce between the states and foreign countries, the regulations must be uniform and of one system or plan. The reason is obvious, being so that no discrimination would occur by reason of such legislation. In the case at bar, the regulations sought to be enforced against the complainants apply only to the East Texas and Oklahoma City oil fields, showing conclusively that they are not intended or meant to be regulations of commerce in a constitutional sense, but merely an attempt upon the part of the Federal Government to limit the production of oil from these two fields and to control the manufacture thereof, essentially matters of state regulation."

It is apparent that the purpose of the attacked regulations in requiring reports and examining books and records, and making inspections of the physical properties, is to obtain evidence against those who might transport the forbidden articles in interstate and foreign commerce, and they are therefore repugnant to the Fourth and Fifth Amendments to the Constitution. Boyd vs. United States, 116 U. S. 616; Counselman vs. Hitchcock, 142 U. S. 547. The learned trial judge, in discussing this phase of this case, said:

> "It has been repeatedly held that in order to subject one to inquisitions, visitations, and interrogations by extrajudicial bodies, for the purpose of obtaining information against them, statutory authority for such claim of right must be shown to plainly and definitely confer upon such bodies such authority. Overton Refining Company vs. C. V. Terrell et al, 4 Fed. Sup. 443; Boyd vs. United States, 116 U. S. 616; Counselman vs. Hitchcock, 142 U. S. 547; Interstate Commerce Commission vs. Brimson, 154 U. S. 448; Harriman vs. Interstate Commerce Commission, 211 U. S. 408."

CONCLUSION

In view of what this court has often said in the decisions above pointed out, it is clear that Title I in its entirely, as well as subsection 9(c) thereof, and the attacked regulations, are not within the powers delegated to the Federal Government by the Constitution.

Is there, then, an inherent power of sovereignty in the Federal Government over and above and outside of the powers delegates to it in the Constitution that may be asserted by Congress to regulate the production of articles that are of general use throughout the nation? That no such power resides in the Federal Government was definitely decided by this court in Kansas vs. Colorado, 206 U. S. 89.

Does an emergency, such as Congress in the preamble of this Act declared to exist, create such power in the Federal Government that Congress and the President may set aside the limitations of the Constitution by which they were intended to be restrained, and thereby dictate to the citizens of a state how much petroleum they can produce during any period, and the minimum wage that they shall pay their employees while producing it, and subject such citizens to criminal prosecutions for the violation of any order made by the President in pursuance of such purpose? It has been repeatedly held by this court that an emergency does not create power and that even during a state of war, Congress nor the President can pass the limitations placed upon them by the Constitution, nor deprive a citizen of those rights guaranteed to him by it. Ex parte Milligan, 4 Wall. 2, 100; United States vs. Lee, 106 U. S. 196; United States vs. Cohen Grocery Company, 255 U. S. 86; Home Building & Loan Association vs. Blaisdell, 290 U. S. 255.

"To what purpose are powers limited," asked the great Chief Justice Marshall, "and to what purpose is that limitation committed to writing in the Constitution, if these limits may at any time be passed by those intended to be restrained?" Marbury vs. Madison, 1 Cranch. 137.

> "The Constitution was not intended to provide merely for the exigencies of a few years, but was to

endure for a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." Martin vs. Hunter, 1 Wheat. 305.

Respectfully submitted,

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APPENDIX A

NATIONAL INDUSTRIAL RECOVERY ACT

(Public No. 67—73rd Congress)

AN ACT

To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—INDUSTRIAL RECOVERY

Declaration of Policy

Section 1

A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies

Section 2(a)

To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

Section 2(b)

The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

Section 2(c)

This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

CODES OF FAIR COMPETITION

Section 3(a)

Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to the approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Section 3(b)

After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

Section 3 (c)

The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

Section 3 (d)

Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

Section 3 (e)

On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title.

In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed.

The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

Section 3 (f)

When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provisions thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

AGREEMENTS AND LICENSES

Section 4 (a)

The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

Sections 4 (b)

Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe.

The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense.

Notwithstanding the provisions of section 2(c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Section 5

While this title is in effect (or in the case of a license, while section 4(a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

LIMITATIONS UPON APPLICATION OF TITLE

Section 6(a)

No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

Section 6(b)

The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

Section 6(c)

Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

Section 7(a)

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Section 7(b)

The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

Section 7(c)

Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3.

The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

Section 7(d)

As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation or within the District of Columbia or any Territory or any insular possession or other place under the jusrisdiction of the United States.

APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

Section 8(a)

This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An

Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes," approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

Section 8 (b)

The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

OIL REGULATION

Section 9 (a)

The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

Section 9 (b)

The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monoply.

Section 9 (c)

The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

RULES AND REGULATIONS

Section 10(a)

The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

Section 10(b)

The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

APPENDIX B

The Three regulations by the Secretary of the Interior involved in the present litigation read as follows:

IV.

> Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:
>
> (1) The residence and post-office address of the producer.
>
> (2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.
>
> (3) The daily production in barrels produced from each property and well.
>
> (4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether pur-

chasers, consignees, or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. (As amended by Order of July 25, 1933.)

V.

Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the

Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner, or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced. (As amended by Order of July 25, 1933.)

VII.

All persons, natural or artificial, embraced within the terms of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL.,
Appellants,

vs.

A. D. RYAN, S. D. BENNETT AND
J. HOWARD MARSHALL,
Appellees.

REPLY BRIEF

We desire to reply briefly to the elaborate brief and argument of counsel for respondents. At the outset they state that the National Industrial Recovery Act is an exertion of power by Congress under the commerce clause of the Constitution to remove obstructions to the free flow of interstate commerce. But the complaint is that Congress, in order to obtain that result, has resorted to a method that exceeds the power conferred upon it by said clause in that it has attempted to subject to its jurisdiction and regulation, through a delegation of its power to the President, matters that are purely local and exclusively within the jurisdiction of the states as contemplated by the Constitution and the Tenth Amendment thereto.

Counsel frankly state that the question to be determined in this case is whether Congress, under the power conferred upon it by the commerce clause of the Constitution, may control the production of petroleum within the borders of the several states, which production is clearly not commerce. **Champlin Refining Company vs. Corporation Commission, 286 U. S. 210.** They conclude that Congress has this power. Their conclusion, as we gather it, is based upon the assumption that Congress has the power to enact any legislation that will result in the maintenance of a fair price for articles moving in interstate commerce, and in order to maintain a fair price, the production of the commodity must be controlled. Consequently, control of the production of the article comes within the jurisdiction of Congress. The question then arises, are counsel correct in this assumption?

The brief of counsel is replete with statements and assertions by various magazine writers and others who claim to have expert knowledge as to the conditions that now prevail and have prevailed for a number of years in the oil industry and the abuses that have been practiced by those engaged in the industry. The purport of the articles by these writers is that the practices followed by those engaged in the oil business for the last seventy-five years must be changed, as well as the nature of the ownership of oil and gas as has been determined and followed by the courts of this land for a like period of time. The sum and substance of the alleged abusive practices consists in this: That when a great oil field, such as the East Texas field, is discovered, where the quality of the oil is of the highest and the cost of production is the lowest, that those that are fortunate enough to own oil wells in such a field or pool immediately avail themselves to the greatest extent possible of the national and foreign markets of petroleum and its products; that those so situated can readily take away from the owners of small or "stripper" wells the national and foreign market that they had held before the discovery of the flush pool, because of the ability of the owners of the wells in the flush pool to produce more cheaply. This, it is said, results in the owners of the small or stripper wells being forced to close down their wells, for they cannot, by pumping from one-fourth of a barrel to a barrel of oil per day, compete with the owners of wells that are capable of producing from 5,000 to 10,000 barrels per day. It is stated by the experts referred to by counsel, that the owners of these stripper wells could continue to produce their wells if a price could be maintained that would justify their production, and that by their continued operation many millions of barrels of petroleum could still be recovered from these small wells; but by permitting the owners of wells in the flush pools to utilize the national and foreign markets, by reason of their ability to produce more cheaply than the owners of the stripper wells, all of the oil still in the ground in the stripper pools will probably remain there and never go into commerce.

From these alleged facts, counsel assert that Congress is authorized by the commerce clause to exert its power to the end that the oil still remaining in the stripper pools will be produced and go into interstate and foreign commerce. And in order to accomplish that result, the owners of wells in the flush pools must be restrained in their production to the extent that a scarcity of petroleum commodities will be maintained so that the price therefor will be sufficiently high to enable the owners of stripper wells to continue operations and supply their portion of the interstate and foreign market to the same extent as if the newly discovered or flush pool were likewise a stripper pool. As stated above, counsel assert that the states, for selfish reasons, refuse to enact uniform legislation so as to equalize these natural conditions that prevail, which results in unfair competition and brings about the direful results pointed out by the magazine writers referred to in their brief. Of course, this argument ignores the privilege of one owning a large well being entitled to produce more oil than one owning a small well. Standard Oil Company vs. United States, 283 U. S. 163.

But this question arises: From where did Congress obtain the power to equalize natural conditions in the several states so as to eliminate unfair competition between citizens of the states? It was held by this court in Hammer vs. Dagenhart, 247 U. S., p. 273, that no such power was conferred upon Congress by the commerce clause. As to this, it said:

> "There is no power vested in Congress to require the states to exercise their police power so as to prevent possible unfair competition. Many causes may cooperate to give one state, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress the general authority to equalize such conditions. In some states laws have been passed fixing minimum wages for women, in others the local law regulates the hours of labor of women in various employments. Business done in such states may be at an economic disadvantage when compared with states which have no such regulation; surely this fact does not give Congress power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other states and approved by Congress. The grant of power to

Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the states in their exercise of the police power over local trade and manufacture. The grant of authority over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the states in the Tenth Amendment to the Constitution. * * * It may be desirable that such laws be uniform, but our federal government is one of enumerated powers; 'This principle', declared Chief Justice Marshall, in McCullough vs. Maryland, 4 Wheat. 316, 'is universally admitted.' A statute must be judged by its natural and reasonable effect. Collins vs. New Hampshire, 171 U. S. 30. The control by Congress over interstate commerce cannot authorize the exercise of authority not intrusted to it by the Constitution. Pipe Line Cases, 234 U. S. 548, 560. The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters intrusted to the nation by the Federal Constitution."

Counsel assert that Congress, under the commerce clause, has the power to regulate and control a purely intrastate business when such business is a part of a general scheme or combination to limit or obstruct the free flow of interstate commerce. No one questions the soundness of this doctrine. Chicago Board of Trade vs. Olsen, 262 U. S. 1; United States vs. Patten, 226 U. S. 525; Standard Oil Company vs. United States, 283 U. S. 163; Stafford vs. Wallace, 258 U. S. 495. And they also correctly state the rule that Congress may, in order to prevent discrimination as to interstate commerce, set aside an intrastate rate established by a state covering only intrastate transportation. H. E. & W. T. Railway Company vs. United States, 234 U. S. 342; Florida vs. United States, 292 U. S. 1. And Congress may authorize the abandonment of a line of railway wholly within a state when it is a part of an interstate system and its maintenance and continued operation is a drain upon such system and affects its operation in interstate commerce. Colorado vs. United States, 271 U. S. 153. Counsel again correctly assert that a conspiracy to restrain the movement of goods in interstate commerce so as to diminish the quantity of such goods in such commerce is within the purview of the Anti-trust Act of Congress. Local 167 et al. vs. United States, 291 U. S. 293. But we fail to perceive where these decisions have any application to the question here presented.

As to the power of Congress through its instrumentality, the Interstate Commerce Commission, to set aside an intrastate rate covering intrastate business conducted by an interstate carrier, Chief Justice Hughes in the State of Florida vs. United States, supra, said:

> "That authority rests upon the constitutional power of the Congress, extending to interstate carriers as instruments of interstate commerce, to require that these agencies shall not be used in such manner as to cripple, retard, or destroy that commerce and to provide for the execution of that power through a subordinate body. The Shreveport Case, 234 U. S. 342."

Here we have no question as to interstate instrumentalities or discrimination between intrastate and interstate business. Therefore the doctrine announced in this line of decisions does not apply.

There is no contention made that the producers of petroleum are conspiring with each other to diminish the amount of petroleum products that are to go into interstate commerce so as to receive a higher price therefor, but on the other hand it is contended that those engaged in the petroleum industry are in a race with each other to place as much of those commodities in interstate commerce as is possible and accepting therefor a price that is less than those expert magazine writers, referred to in the brief of counsel, believe such commodities should bring. Therefore, the doctrine announced by this court in Local 167 vs. United States, supra, as to the power of Congress to prevent combinations and conspiracies in restraint of interstate commerce, would hardly be applicable to the case at bar.

As to the acts of Congress known as the Stock Yards Act and the Future Grain Trading Act, sustained by this court in Stafford vs. Wallace, supra, and Chicago Board of Trade vs. Olsen, supra, respectively, those decisions disclose that the reason for holding those acts valid was because Congress had found from the evidence before it that the businesses there regulated had practiced abuses that directly affected interstate commerce. But here we have no finding by Congress in the act under consideration that abuses were being practiced by those engaged in the oil industry, which directly or substantially affect interstate commerce; neither have we any finding by Congress that the acquisition of the entire national and foreign market of petroleum products by those that are fortunate enough to own wells in a prolific pool resulting in the elimination from such markets of the owners of wells in stripper pools, results in a diminution of such products in interstate and foreign commerce or has a harmful effect upon such commerce; neither is there a finding by Congress that competition in petroleum and its products so that the price therefor is brought to a level below that which is required for the profitable operation of stripper wells, affects interstate and foreign commerce. In the absence of such findings by Congress, then the doctrine announced in Stafford vs. Wallace, supra, and Chicago Board of Trade vs. Olsen, supra, can have no application.

In Hill vs. Wallace, 259 U. S. 69, this court had under consideration the validity of an act of Congress of August 24th, 1921, known as the Future Trading Act, in which, after discussing the act, it said:

> "It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon. United States vs. Ferger, 250 U. S. 199. It was upon this principle that in Stafford vs. Wallace, 258 U. S. 495, we held it to be within the power of Congress to regulate business in the stockyards of the country, and include therein the regulation of commission men and of traders there, although they had to do only with sales completed and ended within the yards, because Congress had concluded that through exhorbitant charges, dishonest practices, and collusion, they were likely, unless regulated, to impose a direct burden on the interstate commerce passing through. So, too, in United States vs. Patten, 226 U. S. 525, it was held that though this court, as we have seen, had decided in the Ware & Leland Case (209 U. S. 405) that mere contracts for sales of cotton for future deliveries which did not oblige interstate shipments were not interstate commerce, an

> indictment charging the defendant with having cornered the whole cotton market of the United States by excessive purchases of cotton for future delivery and thus conspired to restrain, obstruct, and monopolize interstate commerce in cotton, was sustained under the first and second sections of the Sherman Anti-trust Law. This case, like Stafford vs. Wallace, followed the principles of Swift & Company vs. United States, 196 U. S. 375. But the form and limitations of the act before us form no such basis as those cases presented for federal jurisdiction and the exercise of the power to protect interstate commerce."

Counsel assert that the act of Congress under consideration merely manifests a different economic policy of Congress as to interstate commerce from that manifested by it in the enactment of the Sherman Anti-trust Act, in that under the Sherman Anti-trust Act it was the policy of Congress that commodities moving in that commerce could be purchased as cheaply as possible, while under the National Industrial Recovery Act Congress manifested a policy that it is for the best welfare of the nation that commodities moving in that commerce shall bring as high a price as possible. Counsel further state that Congress had the right to adopt either policy that it saw fit. In this doctrine we cannot acquiesce.

By the Anti-trust Act, Congress declared it to be its policy that monopolies and combinations which would result in the diminution of commodities and restraint of trade in interstate commerce should be prohibited. It is manifest from that act that the results sought to be obtained by Congress were two-fold. First, every American citizen has now and had at the time of the adoption of the Constitution, the natural right to engage in commerce, and it was for the protection of that right that the power to regulate it, in so far as interstate and foreign commerce is concerned, was conferred upon the national government. Therefore Congress, by the enactment of the Anti-trust Law, merely carried out one of the purposes of the delegation to it of the power to regulate interstate and foreign commerce by prohibiting monopolies and combinations that would prevent one from engaging in that commerce who, but for such monopolies and combinations, would be enabled to engage therein. The second result sought to be obtained by Congress by that act was, of course, to protect those purchasing commodities in interstate commerce from paying more for such commodities than they would be required to pay if such commodities moved free and without restraint. The Anti-trust Law was but the affirmance by Congress of the policy peculiar to America, upon which it had prospered and grown beyond the imagination of man, that competition should never be limited or restrained, and which policy had been followed by the states in matters within their jurisdiction for one hundred years. Northern Securities Company vs. United States, 193 U. S. 198. It is therefore inconceivable that Congress ever had in mind departing from the policy manifested by the Anti-trust Act. We fail to see anything in the act that warrants the conclusion that Congress intended that commerce in any commodity was to be restrained. On the other hand, the manifest purpose of the act was to increase the flow of commerce. This cannot be construed to mean that where commerce in a commodity is flowing freely and unrestrained in a certain area that a restraint must be placed upon the movement of the commodities in that area in order to permit like commodities to move that are produced in an area less favorably situated, where the cost of production is greater, and, as a consequence, cannot move in competition with the commodities produced in the favored area, unless the production of the commodities in the favored area is restricted to the level of production in the unfavored area.

It may be conceded that the ultimate purpose of Congress in enacting the act under consideration was to increase the flow of interstate commerce, as that would naturally follow the reemployment of labor and the resumption of the manufacture of goods. But to attain that end, Congress has resorted to a method beyond its power by assuming jurisdiction over and regulating the manufacture of goods, the production of minerals and the employment of labor and fixing the wages to be paid for such labor, none of which are within its jurisdiction. Cornell vs. Coyne, 192 U. S. 418; Browning vs. Waycross, 233 U. S. 16, 22; Delaware L. & W. Rr. Co. vs. Yurkonis, 238 U. S. 439, 444; General R. Signal Co. vs. Virginia, 246 U. S. 500; Hammer vs. Dagenhart, 247 U. S. 251, 272; Arkadelphia Mill Co. vs. St. Louis Southwestern Rr. Co., 249 U. S. 134, 151; Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129, 136; Heisler vs. Thomas Colliery Co., 260 U. S. 245; Champlin Refining Company vs. Corporation Commission, 286 U. S. 210.

That Congress was actuated by the highest motive in its attempt to relieve depression and distress, cannot be doubted, but if it adopted an unconstitutional method to accomplish that purpose, which in the end would destroy our system of government, then, however high its motive and the good sought to be obtained, the act cannot stand. In Bailey vs. Drexel Furniture Company, 259 U. S. 37, Chief Justice Taft said:

> "It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress but left or committed by the supreme laws of the land to the control of the states. We cannot avoid the duty, even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an

insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and national power, on the other, our country has been able to endure and prosper for near a century and a half. * * * Should Congress in the execution of its powers, adopt measures which are prohibited by the Constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say, that such an act was not the law of the land."

Respectfully submitted,

F. W. FISCHER,
Tyler, Texas,
Attorney for Appellants.

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL., PETITIONERS,

v.

A. D. RYAN, S. D. BENNETT, AND J. HOWARD Marshall

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

The respondents do not oppose the granting of the petition.

The questions presented relate to the validity of Section 9 (c) of the Act of June 16, 1933, known as the National Industrial Recovery Act, and to the validity and applicability to petitioners of Regulations IV, V, and VII, as amended, promulgated by Harold L. Ickes, Secretary of the Interior, in aid of the enforcement of Section 9 (c). The pertinent provisions of the National Industrial Recovery Act are set forth in Appendix A, *infra*, p. 6, and the regulations, as amended, are set forth in Appendix B, *infra*, pp. 7–9.

The court below, reversing the decree of the District Court of the United States for the Eastern District of Texas, held that Section 9 (c) is valid and that the regulations are valid and enforceable against petitioners. Respondents believe that the decision of the court below is correct, but do not, in view of the importance of the questions involved, oppose the issuance of the writ of certiorari.

Amended regulations recently promulgated by the Secretary of the Interior do not appear to render the cause moot

Since the decision below was handed down, the regulations involved herein have been amended. The Government wishes to call the attention of the Court to these changes and their possible bearing upon the propriety of the request for certiorari.

The Secretary of the Interior by an order dated July 20, 1934 (as amended by his order of July 24, 1934), amended the prior regulations promulgated by him to carry out the provisions of Section 9 (c) by substituting therefor new regulations insofar as future transactions are concerned. The new regulations are set forth in Appendix C, *infra,* pp. 10–13.

The new regulations embody substantially all the requirements of the three earlier regulations (IV, V, VII) under attack in this cause. The earlier regulations required monthly reports by producers of petroleum (Reg. IV), and by purchasers, shippers, and refiners of petroleum (Reg. V), containing certain data. The new regulations require such producers, purchasers, shippers, and refiners to keep and preserve the same data (Reg. V, A, B) and to report to the Secretary of the Interior from time to time, as called for by him (Reg. VI). The only obligation imposed by the earlier regulations and not by the present ones is that the reports of producers, purchasers, etc., shall contain a declaration that none of the petroleum which they have produced and shipped, or received and disposed of, was produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order prescribed thereunder. The provisions of the earlier regulations (Reg. VII) that all persons subject to Section 9 (c) and to regulations issued thereunder shall keep and maintain, available for inspection by the Department of the Interior, adequate books and records of all transactions involving the production and transportation of petroleum, are continued in force by the new regulations (Regs. IV and V).

A suit attacking the validity of an order by a Federal regulatory body does not become moot because of expiration of the order, where the order is a matter of public interest and is likely to be repeated or renewed. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U.S. 498, 514–516; *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U.S. 433, 452. See also *McGrain* v. *Daugherty,* 273 U.S. 135, 181–182. *A fortiori* the case is not moot where, as here, the order under attack is merely modified and substantially all of its pertinent provisions are continued in effect by the amending order.

Furthermore, the suit was brought to enjoin prosecution of past as well as future violations of certain regulations of the Secretary of the Interior (R. 7, 9, 12). Petitioners' liability for prior violations of the original regulations is still at issue in this case, since the new regulations promulgated by the Secretary on July 20, 1934, are substituted for the earlier ones only " insofar as future transactions thereby or hereby regulated are concerned." In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U.S. 433, *supra,* which held that a suit to enjoin an order of the Interstate Commerce Commission fixing reasonable transportation rates did not become moot upon expiration of the order, the Court referred (p. 452) to " the possible liability for reparation to which the railroads might be subjected if the legality of the order were not determined."

Apart from the foregoing considerations, the validity of Section 9 (c) is an issue in the case not affected by the change in the regulations. The bill of complaint alleges the invalidity of this section (R. 5). The decree entered by the District Court enjoins the enforcement of " any rule or regulation promulgated by the Secretary of the Interior " under the National Industrial Recovery Act insofar as it applies to the production, refining, storage or transportation of petroleum in intrastate commerce (R. 162). The decree also enjoins interfering in any way with the conduct of petitioners' business by reason of the provisions of that Act "or regulations promulgated thereunder" (R. 163). The Circuit Court of Appeals in its opinion sustained the validity of Section 9 (c) (R. 231–232), and one of the grounds upon which petitioners rely for the allowance of a writ of certiorari is that this holding is erroneous.

Respectfully submitted.

✓ J. CRAWFORD BIGGS,
Solicitor General.
✓ HAROLD M. STEPHENS,
Assistant Attorney General.
✓ CARL MCFARLAND,
✓ M. S. HUBERMAN,
✓ CHARLES H. WESTON,
Special Assistants to the Attorney General.
✓ NATHAN R. MARGOLD,
Solicitor of the Department of the Interior.
✓ CHARLES FAHY,
First Assistant Solicitor of the
Department of the Interior.

AUGUST 1934.

APPENDIX A

The National Industrial Recovery Act, approved June 16, 1933, c. 90, 48 Stat. 195 (U.S.C. Sup. VII, Title 15, Secs. 702(b), 709(c), 710(a)) provides in part:

> SEC. 2 (b). The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.
>
> SEC. 9 (c). The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.
>
> SEC. 10 (a). The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

APPENDIX B

The three regulations by the Secretary of the Interior involved in the present litigation read as follows:

IV

> Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:
>
> (1) The residence and post-office address of the producer.
>
> (2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.
>
> (3) The daily production in barrels produced from each property and well.
>
> (4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together

with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. (As amended by Order of July 25, 1933.)

V

Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner, or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the pe-

troleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced. (As amended by Order of July 25, 1933.)

VII

All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

APPENDIX C

The regulations promulgated by the Secretary of the Interior on July 20, 1934, as amended by him on July 24, 1934, provide in part as follows:

> By virtue of and pursuant to the authority vested in me by Sections 9 (c) and 10 (a) of Title I of the Act of Congress entitled "The National Industrial Recovery Act" approved June 16, 1933 (48 Stat. 195) and the executive orders of the President of the United States No. 6199 (July 11, 1933) and No. 6204 (July 14, 1933) issued pursuant to such legislation, the regulations and amendments thereto promulgated by me on July 15, 1933, July 25, 1933, August 2, 1933, August 21, 1933, April 6, 1934, and May 21, 1934, pursuant to said authority are hereby amended by substituting therefor the following regulations insofar as future transactions thereby or hereby regulated are concerned:
>
> ### IV
>
> All persons engaged in producing, refining, reclaiming, shipping, storing, transporting, buying or selling, or otherwise dealing in or handling petroleum or the products thereof shall permit any officer, agent, or employee of the Division of Investigations of the Department of the Interior to enter upon their properties, plants, or facilities and to examine all of the books and records kept or required to be kept in accordance

with these Regulations and all other books, papers, records, vouchers, run tickets, bills of lading, way-bills, charts, memoranda, or other documents which are used by them in the process of producing, storing, refining, reclaiming, transporting, handling or otherwise dealing with petroleum or the products thereof, * * *.

V

From the date of approval of these Regulations the following records shall be kept and preserved accurately and completely, showing the complete details of each transaction as follows:

A. By producers:

* * * * *

(3) An opening and closing inventory of the crude petroleum on hand each 24 hour day.

(4) The daily production in barrels of petroleum produced from each lease and well (estimated as to wells which are produced into common tankage and of which no separate gauge is made) with a notation of the allowance made for basic sediment and water, and the tanks, identified by number, into which the petroleum was produced.

(5) The amount of crude petroleum consumed, refined or processed upon the property daily.

(6) A daily record of all deliveries of crude petroleum or products thereof, showing the names and places of business of all persons to whom such petroleum or products thereof was delivered, whether purchasers, consignees or transporting agencies, the quantity involved in each delivery, transportation or other disposition, the identity of

the means of transportation by which the petroleum or products thereof was removed, and the identifying numbers of tenders where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

B. By Every Purchaser, Refiner, Storer, Shipper or Consignor of Petroleum or Petroleum Products, and by Every Person dealing in Petroleum or Petroleum Products as a Factor, Broker, Buyer, or Seller:

(1) An opening and closing inventory of crude petroleum and petroleum products on hand each 24 hour day.

(2) The daily receipts of crude petroleum and the products thereof showing the amount received, the place and date of each receipt, the tanks identified by number into which received, the names and addresses of all producers or other persons from whom the crude petroleum and the products thereof were received, and a description identifying the transporting agency by which received.

(3) The amount of crude petroleum and the products thereof used or otherwise disposed of daily showing the amount run to stills and the amount and type of petroleum products produced.

(4) A daily record of all deliveries of petroleum and the products thereof including the names and addresses of purchasers and a description identifying the transporting agency delivering such petroleum and petroleum products, and the identifying numbers of tenders where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

VI

From time to time or periodically as called for by the Secretary of the Interior sworn reports on forms approved by the Secretary of the Interior shall be filed by producers, purchasers, refiners, reclamation plants, transporting agencies, shippers, or other persons dealing in or handling petroleum or its products. Each such report when called for shall show the full and accurate data required completely to fill out such form, accurately and fully reporting the data called for from the records required to be kept under Regulation V above.

U. S. GOVERNMENT PRINTING OFFICE: 1934

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners
v.
ARCHIE D. RYAN, S. D. BENNETT, AND PHIL E. BAER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

The respondents do not oppose the granting of the petition.

The questions presented relate to the validity of Section 9 (c) of the Act of June 16, 1933, known as the National Industrial Recovery Act, to the validity and applicability to petitioners of Regulations IV and VII, as amended, promulgated by Harold L. Ickes, Secretary of the Interior, in aid of the enforcement of Section 9 (c), and to the validity of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, approved by the President under Title I of the National Industrial Recovery Act. The pertinent provisions of the National Industrial Recovery Act are set forth in Appendix A, *infra;* the pertinent provisions of the Code of Fair Competition for the Petroleum Industry are set forth, *infra,* p. 6ff, and the Regulations, as amended, are set forth in Appendix B, *infra.*

The decree of the District Court of the United States for the Eastern District of Texas enjoined the respondents from (1) enforcing or attempting to enforce against petitioners, their agents and employees, Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, (2) requiring from petitioners, their agents, servants, and employees the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior, under Section 10 (a) of the National Industrial Recovery Act, (3) instituting any actions of a civil or criminal nature against petitioners for violations of "the aforesaid Code provisions and regulations above mentioned", and from (4) going upon the property of petitioners "under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned." (R. 178–179.)

The court below, reversing the decree of the District Court, held that Section 9 (c) is valid and

Regulations IV and VII are valid and enforceable against petitioners, and held that injunctive relief could not be had against the enforcement of Section 4 of Article III of the Code, because "an adequate remedy against abuse is afforded in the proceedings indicated by the statute [Sections 3 (b), 3 (c) and 3 (f)] for their respective enforcement" (R. 250), although the court was also of the opinion that "the provision of the Code thus enforced [e.g., as provided in Sections 3 (b), 3 (c) and 3 (f)] does not appear to be unconstitutional" (R. 250).

In view of the uncontroverted evidence establishing that petitioners were in danger at the time of the filing of the suit of criminal prosecution for violation of the Code provision (R. 97–98, 244), the opinion of the court below, so far as it is based on the impropriety of injunctive relief, does not appear to be in accord with other decisions. See *Champlin Refining Co.* v. *Corporation Commission of Oklahoma,* 286 U.S. 210, 238; *Philadelphia Co.* v. *Stimson,* 223 U.S. 605, 621–622.

AMENDED REGULATIONS RECENTLY PROMULGATED BY THE SECRETARY OF THE INTERIOR DO NOT APPEAR TO RENDER THE CAUSE MOOT

Since the decision below was handed down, the regulations adopted in aid of Section 9 (c) have been amended. The Government wishes to call the attention of the Court to these changes and their possible bearing upon the propriety of the request for certiorari.

The Secretary of the Interior by an order dated July 20, 1934 (as amended by his order of July 24, 1934), amended the prior regulations promulgated by him to carry out the provisions of Section 9 (c) by substituting therefor new regulations insofar as future transactions are concerned. The new regulations are set forth in Appendix C, *infra.*

The new regulations embody substantially all the requirements of the two earlier regulations (IV, VII) under attack in this cause. The earlier regulations required monthly reports by producers of petroleum (Reg. IV) containing certain data. The new regulations require such producers to keep and preserve the same data (Reg. V, A) and to report to the Secretary of the Interior from time to time, as called for by him (Reg. VI). The only obligation imposed by the earlier regulations and not by the present ones is that the reports of producers shall contain a declaration that none of the petroleum which they have produced and shipped was produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order prescribed thereunder. The provisions of the earlier regulations (Reg. VII) that all persons subject to Section 9 (c) and to regulations issued thereunder shall keep and maintain, available for inspection by the Department of the Interior, adequate books and records of all transactions involving the production and transportation of petroleum, are continued in force by the new regulations (Regs. IV and V).

A suit attacking the validity of an order by a Federal regulatory body does not become moot because of expiration of the order, where the order is a matter of public interest and is likely to be repeated or renewed. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U.S. 498, 514–516; *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U.S. 433, 452. See also *McGrain* v. *Daugherty,* 273 U.S. 135, 181–182. *A fortiori* the case is not moot where, as here, the order under attack is merely modified and substantially all of its pertinent provisions are continued in effect by the amending order.

Furthermore, the suit was brought to enjoin prosecution of past as well as future violations of certain regulations of the Secretary of the Interior (R. 22). Petitioners' liability for prior violations of the original regulations is still at issue in this case, since the new regulations promulgated by the Secretary on July 20, 1934, are substituted for the earlier ones only "insofar as future transactions thereby or hereby regulated are concerned." In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U.S. 433, *supra,* which held that a suit to enjoin an order of the Interstate Commerce Commission fixing reasonable transportation rates did not become moot upon expiration of the order, the Court referred (p. 452) to "the possible liability for reparation to which the railroads might be subjected if the legality of the order were not determined."

Moreover, the validity of Section 9(c) and of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is an issue in the case not affected by the change in the regulations.

The Code of Fair Competition for the Petroleum Industry, as approved by the President on August 19, 1933, provided in sections 3 and 4 of Article III as follows:

> SEC. 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedules for the producing States and for the industry. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

> SEC. 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should such quotas allocated in conformity with the provisions of this section not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State in which event it is hereby agreed that such quotas shall become operating schedules for that State.
>
> If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this code.

On September 13, 1933, modifications of the foregoing and various other provisions of the code were made by Executive Order. The Executive Order referred to, so far as it pertains to the above-quoted provisions, reads:

> ARTICLE III, Section 3, is amended to read as follows:

Section 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry [and thereupon Section 4 of this Article shall apply]. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

(The brackets indicate new matter.)

ARTICLE III, Section 4, is amended to read as follows:

Section 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section [and/or Section 3 of Article III

> of this Code] not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State. (The brackets indicate new matter.)

Thus the Executive Order, in addition to adding the language bracketed, omitted the second paragraph of Section 4 of Article III of the code as originally approved, reading as follows:

> If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this code.

We are informed that the omission was inadvertent and it now appears that the trial court (R. 204–233)[1], the court below (R. 243), the petitioners and their counsel (Pet. pp. 25–26), counsel for the government below, and the industry generally[2], have assumed throughout that the second paragraph of Section 4 of Article III had been continued in effect.

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[1] While the trial court's opinion does not specifically quote the language in question, the tenor of the opinion and the ruling of the court are clearly upon the assumption that the second paragraph in question had been continued in effect.

We are informed that a supplemental Executive Order will be applied for under the National Industrial Recovery Act so modifying that portion of the Executive Order of September 13, 1933, which relates to Section 4 of Article III of the Code, as to cause the same to contain the language omitted as above set forth. If such Executive Order is issued, certified copy thereof will be filed with the Clerk of the Court.

If certiorari is granted herein, argument of the case upon the merits for the respondents will include discussion of the effect of the foregoing.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
HAROLD M. STEPHENS,
Assistant Attorney General.
CARL MCFARLAND,
M. S. HUBERMAN,
Special Assistants to the Attorney General.

SEPTEMBER 1934.

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[2] See Oil Code Data Book, published by National Petroleum News, Issue No. 3, p. 21; print, distributed by Planning and Coordination Committee, of the Code of Fair Competition for the Petroleum Industry as signed by the President August 19, 1933, and modified by the President September 13, 1933, p. 8.

APPENDIX A

The National Industrial Recovery Act, approved June 16, 1933, c. 90, 48 Stat. 195 (U.S.C. Sup. VII, Title 15, Secs. 701, 702 (b), 702 (c), 703 (a), 703 (b), 703 (c), 703 (f), 709 (c), 710 (a)) provides in part:

> SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Sec. 2. (b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Sec. 9. (c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

Sec. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

APPENDIX B

The two regulations by the Secretary of the Interior involved in the present litigation read as follows:

IV

> Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:
>
> (1) The residence and post-office address of the producer.
>
> (2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.
>
> (3) The daily production in barrels produced from each property and well.
>
> (4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together

with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. [As amended by Order of July 25, 1933.]

VII

All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73d Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

APPENDIX C

The regulations promulgated by the Secretary of the Interior on July 20, 1934, as amended by him on July 24, 1934, provide in part as follows:

> By virtue of and pursuant to the authority vested in me by Sections 9 (c) and 10 (a) of Title I of the Act of Congress entitled "The National Industrial Recovery Act" approved June 16, 1933 (48 Stat. 195) and the executive orders of the President of the United States No. 6199 (July 11, 1933) and No. 6204 (July 14, 1933) issued pursuant to such legislation, the regulations and amendments thereto promulgated by me on July 15, 1933, July 25, 1933, August 2, 1933, August 21, 1933, April 6, 1934, and May 21, 1934, pursuant to said authority are hereby amended by substituting therefor the following regulations insofar as future transactions thereby or hereby regulated are concerned:
>
> ## IV
>
> All persons engaged in producing, refining, reclaiming, shipping, storing, transporting, buying or selling, or otherwise dealing in or handling petroleum or the products thereof shall permit any officer, agent, or employee of the Division of Investigations of the Department of the Interior to enter upon their properties, plants, or facilities and to examine all of the books and records kept or required to be kept in accordance with these Regulations and all

other books, papers, records, vouchers, run tickets, bills of lading, way-bills, charts, memoranda or other documents which are used by them in the process of producing, storing, refining, reclaiming, transporting, handling or otherwise dealing with petroleum or the products thereof, and to inspect such plants, facilities and properties and to gauge tanks and to examine wells, pipe lines, gathering systems, flow lines, pipe connections, storage tanks, loading racks, separators, pumps, meters or other measuring devices and any other equipment or instruments.

Every initial producer of petroleum, and every initial manufacturer of every product of petroleum, shall accurately gauge and measure all petroleum and all products thereof before any part thereof leaves his possession or control. No means or device which prevents such accurate measurement shall be used. Complete and accurate records of all such measurements shall be kept up to date and preserved, and shall be open to the inspection of any duly authorized agent of the Division of Investigations of the Department of the Interior at all reasonable times.

V

From the date of approval of these Regulations the following records shall be kept and preserved accurately and completely, showing the complete details of each transaction as follows:

A. By Producers:

(1) The location of the producing properties, the number and location of wells thereon, and the allowable production for each

property and well as prescribed by the proper State agency.

* * * * *

(3) An opening and closing inventory of the crude petroleum on hand each 24-hour day.

(4) The daily production in barrels of petroleum produced from each lease and well (estimated as to wells which are produced into common tankage and of which no separate gauge is made) with a notation of the allowance made for basic sediment and water, and the tanks, identified by number, into which the petroleum was produced.

(5) The amount of crude petroleum consumed, refined or processed upon the property daily.

(6) A daily record of all deliveries of crude petroleum or products thereof, showing the names and places of business of all persons to whom such petroleum or products thereof was delivered, whether purchasers, consignees or transporting agencies, the quantity involved in each delivery, transportation or other disposition, the identity of the means of transportation by which the petroleum or products thereof was removed, and the identifying numbers of tenders where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

* * * * *

VI

From time to time or periodically as called for by the Secretary of the Interior sworn reports on forms approved by the Secretary of the Interior shall be filed by producers, purchasers, refiners, reclamation plants, transporting agencies, shippers, or other persons dealing in or handling petroleum or its products. Each such report when called for shall show the full and accurate data required completely to fill out such form, accurately and fully reporting the data called for from the records required to be kept under Regulation V above.

U. S. GOVERNMENT PRINTING OFFICE: 1934

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners

v.

ARCHIE D. RYAN, S. D. BENNETT, AND PHIL E. BAER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

In the original memorandum filed by the respondents herein the attention of the Court was directed to the omission in the Executive Order of September 13, 1933, of the second paragraph of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry. On September 25, 1934, an Executive Order was issued duly reinstating this paragraph as a part of the Code. A certified copy of this Executive Order, which is printed in the Appendix *infra*, has been filed with the Clerk of this Court.

Since the filing of the original memorandum the Government has considered the legal effect of the omission of this paragraph in the Executive Order of September 13, 1933, and has concluded that it cannot, and therefore it does not intend to, prosecute petitioners or other producers of oil in Texas, criminally or otherwise, for exceeding, at any time prior to September 25, 1934, the quotas of production assigned to them under the laws of Texas.[1] If, however, petitioners or other producers produce in excess of such quotas after September 25, 1934, the Government intends to prosecute them under the National Industrial Recovery Act, since by reason of the Executive Order of September 25, 1934, such production will after that date be a violation of the Code.

The Government believes that the Court may, on the record in this case, consider and determine the validity of Section 4 of Article III, as thus amended by the Executive Order of September 25, 1934. See *Texas Co.* v. *Brown,* 258 U.S. 466, 474; *Pugh* v. *McCormick,* 14 Wall. 361, 374; *Watts, Watts & Company* v. *Unione Austriaca &c.,* 248 U.S. 9, 21; *American Foundries* v. *Tri-City Council,* 257 U.S. 184, 201. Both courts below considered the case on the assumption that the second paragraph of this section was a part of the Code. Moreover, the considerations bearing upon the validity of this paragraph are in no material respects now different from those existing at the time of the original adoption of the Code. Finally, petitioners have assumed during the entire course of this case that this paragraph had not been eliminated from the Code (see Pet. pp. 25–26) and have informed the Government that they desire the Court on this record to consider and determine the validity of this paragraph.

---

[1] Although the second paragraph of Section 4 of Article III was a part of the Code for a short period prior to September 13, 1933, the Government has concluded that no legal basis for prosecution for production in Texas during this period exists.

It is submitted that there is sufficient basis for jurisdiction in equity in this case to restrain the enforcement of the second paragraph of Section 4, if invalid, despite the fact that it has been operative only since September 25, 1934. See *Hygrade Provision Company* v. *Sherman,* 266 U.S. 497, 499–500; *Terrace* v. *Thompson,* 263 U.S. 197, 212, 214–216; *Philadelphia Company* v. *Stimson,* 223 U.S. 605, 620–621; *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Euclid* v. *Ambler Realty Company,* 272 U.S. 365.

Should this Court conclude that it may not in this case consider and determine the validity of Section 4 of Article III of the Code, as amended by the Executive Order of September 25, 1934, respondents respectfully submit that the writ of certiorari, if granted, should be limited to the questions relating to Section 9 (c) of the National Industrial Recovery Act and the Regulations promulgated by the Secretary of the Interior in aid of the enforcement of that section, since the other questions in this case, relating to Section 4 of Article III of the Code, would be moot, in view of the fact that the Government cannot and does not intend to prosecute petitioners for producing prior to September 25, 1934, in excess of their State quotas.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

HAROLD M. STEPHENS,
Assistant Attorney General.

CARL McFARLAND,
M. S. HUBERMAN,
Special Assistants to the Attorney General.

SEPTEMBER 1934.

APPENDIX

The Executive Order of September 25, 1934, reads as follows:

EXECUTIVE ORDER

AMENDMENT TO THE CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY

WHEREAS, the Administrator of the Code of Fair Competition for the Petroleum Industry has submitted for my approval a proposed amendment to said Code,

NOW, THEREFORE, I, by virtue of and pursuant to the authority vested in me by Title I of the National Industrial Recovery Act of June 16, 1933, (c. 90, 48 Stat. 195), do hereby find that:

(1) An application has been duly made pursuant to and in full compliance with the provisions of Title I of said Act for my approval of an amendment to Section 4 of Article III of said Code; and

(2) Due notice and opportunity for hearings to interested parties has been given, and hearings have been held upon said application pursuant to such notice; and

(3) Said amendment complies in all respects with the pertinent provisions of the Act, including clauses (1) and (2) of Subsection (a) of Section 3 of Title I of said Act, and will tend to effectuate the policy of said Title.

NOW, THEREFORE, I, by virtue of and pursuant to the authority vested in me by said Title, do hereby approve an amendment to Section 4 of Article III of said Code of Fair Competition for the Petroleum Industry so as to make said Section read as follows:

> SECTION 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.
>
> If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code.

FRANKLIN D. ROOSEVELT.

HYDE PARK, N.Y.,
September 25, 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners,
v.
ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER

No. 135

PANAMA REFINING COMPANY ET AL., PETITIONERS,
v.
A. D. RYAN, S. D. BENNETT AND J. HOWARD MARSHALL

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the District Court for the Eastern District of Texas[1] is reported in 5 F. Supp. 639.

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[1] No. 260, R. 149–171; No. 135, R. 149–171.

The opinions of the Circuit Court of Appeals for the Fifth Circuit[2] are reported in 71 F. (2d) 1, 8.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on May 22, 1934 (No. 260, R. 192; No. 135, R. 191). Petition for certiorari in No. 135 was filed June 20, 1934, and in No. 260 on August 6, 1934, and both petitions were granted October 8, 1934 (No. 260, R. 197; No. 135, R. 195).

Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The following questions[3] are presented with respect to the production-control provisions[4] of the Code of Fair Competition for the Petroleum Industry (approved by the President under the National Industrial Recovery Act), which provide for the ascertainment by a Federal Agency of the national demand for crude petroleum, the allocation thereof equitably among the producing States and the subdivision into individual well quotas by a State of that part of the national demand assigned to it, and which make production in excess of quotas thus assigned by a State a violation of the code:

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[2] No. 260, R. 180–192; No. 135, R. 178–190.

[3] As no substantial questions are presented in the *Panama* case (No. 135) not raised in the *Amazon* case (No. 260), and since the cause of action in both cases arose in the East Texas oil field, it is believed that it will save the time of the Court if one brief is submitted by respondents for both cases. Where a particular question is presented in only one of the cases that fact will be clearly indicated under the appropriate heading of the brief.

[4] The questions with respect to the Code of Fair Competition for the Petroleum Industry are presented only in No. 260 (the *Amazon* case).

(1) Whether such provisions are a valid exercise of the power vested in Congress by the Constitution to regulate commerce among the several States and with foreign nations.

(2) Whether such provisions are in violation of the due process clause of the Fifth Amendment to the Constitution.

(3) Whether Title I of the National Industrial Recovery Act in authorizing the President to approve Codes of Fair Competition invalidly delegates legislative powers to the President.

(4) Whether the production-control provisions of the Code of Fair Competition for the Petroleum Industry are authorized by Title I of the National Industrial Recovery Act.

The following questions are presented with respect to Sec. 9 (c)[5] of the National Industrial Recovery Act, which authorizes the President to prohibit the transportation in interstate and foreign commerce of petroleum or its products produced or withdrawn from storage in violation of State law:

(5) Whether such prohibition is a valid exercise of the power vested in Congress by the Constitution

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[5] In both of the cases the two questions with respect to Sec. 9 (c) are presented.

to regulate commerce among the several States and with foreign nations.

(6) Whether the authorization vested by this section in the President is an invalid delegation of legislative power.

The following questions are presented with respect to Regulations IV, V and VII[6] (promulgated under Sec. 10 (a) of the National Industrial Recovery Act to aid in the enforcement of Sec. 9 (c) of the Act), which require monthly reports from producers and refiners and the maintenance by them of books and records open to inspection, covering all transactions involving the production and transportation of petroleum and its products:

(7) Whether such regulations are authorized by Title I of the National Industrial Recovery Act.

(8) Whether they are valid exercises of the power vested in Congress by the Constitution to regulate commerce among the several States and with foreign nations.

(9) Whether they are in violation of the due process clause of the Fifth Amendment to the Constitution.

(10) Whether they violate the guarantee against self-incrimination contained in the Fifth Amendment to the Constitution.

(11) Whether they violate the guarantee against unreasonable searches and seizures contained in the Fourth Amendment to the Constitution.

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[6] The validity of all three regulations is presented in No. 135 (the *Panama* case). The validity of Regulations IV and VII is presented in No. 260 (the *Amazon* case).

STATUTE, CODE PROVISIONS, AND REGULATIONS INVOLVED

The pertinent provisions of the Act of June 16, 1933, known as the National Industrial Recovery Act, and the Code of Fair Competition for the Petroleum Industry, and the pertinent Regulations are set forth in Appendix A, *infra,* pp. 196–228.[7]

STATEMENT

These cases came to the court below upon appeal by the respondents from decrees entered on February 21, 1934, by the United States District Court for the Eastern District of Texas (No. 260, R. 131–135; No. 135, R. 133–134). A number of causes were consolidated with each case (No. 260, R. 131–135; No. 135, R. 133–134). No. 260 will hereinafter be referred to as the *Amazon* case, and No. 135 as the *Panama* case.

In the *Amazon* case several owners and operators of oil-producing properties in the East Texas oil field filed a bill in equity on October 27, 1933, in the District Court of the United States for the Eastern District of Texas (No. 260, R. 1–15) against Archie D. Ryan, Special Agent of the Division of Investigations of the Department of the Interior in charge of the Tyler, Texas, office of said Division; S. D. Bennett, United States Attorney for the

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[7] For the convenience of the Court the provisions of the Act, Code, and Regulations directly involved in these cases are also summarized and, in some instances, set forth in full in the statement (*infra*, pp. 7–18).

Eastern District of Texas; and Phil E. Baer, United States Marshal for said District, seeking to restrain them from enforcing Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry (hereinafter called the Petroleum Code) and Regulations IV and VII promulgated by the Secretary of the Interior in aid of the enforcement of Section 9 (c) of the National Industrial Recovery Act (hereinafter called the Recovery Act).[8] The bill contained allegations relating to numerous other provisions of the Code (No. 260, R. 8–9, 11), but at the trial of the case no evidence was offered by the complainants with respect to these provisions, and the decree entered by the District Court (No. 260, R. 131–135) was limited to Section 4 of Article III of the Petroleum Code and Regulations IV and VII.[9]

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[8] In the same bill the complainants also sued to restrain the Railroad Commission of Texas, and other officers of that State, from enforcing orders issued by the Commission under the laws of Texas fixing the allowable production of oil for the entire State, and for each of the wells therein (No. 260, R. 1–15). This cause of action was severed from that against the Federal officers, and was tried before a statutory three-judge court (No. 260, R. 63–64, 133, 150), which upheld the orders of the Railroad Commission. *Amazon Petroleum Corporation* v. *Railroad Commission*, 5 F. Supp. 633.

[9] Although the bill of complaint and the decree of the District Court in the *Amazon* case did not in terms refer to the provisions of Regulation VII, the prayer for relief (No. 260, R. 15) and the decree (No. 260, R. 134) are sufficiently broad to include restraint of the enforcement of this Regulation. The Circuit Court of Appeals in its opinion in the *Amazon* case passed upon the validity of Regulation VII (No. 260, R. 182, 187, 190).

In the *Panama* case several producers and refiners in the East Texas oil field filed a bill in equity on October 23, 1933, in the District Court for the Eastern District of Texas (No. 135, R. 1–23) against Ryan and Bennett, and also against J. Howard Marshall, a Special Assistant to the Attorney General, seeking to restrain them from enforcing Regulations IV and VII, above referred to, and in addition, Regulation V, likewise promulgated by the Secretary of the Interior in aid of the enforcement of Section 9 (c) of the Recovery Act.

A brief description of the pertinent provisions of the Recovery Act, the Petroleum Code, and the Regulations will be helpful in clarifying the issues presented in these cases.

Pertinent provisions of the Recovery Act.—The Recovery Act, approved June 16, 1933 (c. 90, 48 Stat. 195), is entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes." Title I is entitled "Industrial Recovery" and Title II (not material here) is entitled "Public Works and Construction Projects." Section 1 of the Act states:

> A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist.

This section then asserts the policy of Congress in enacting this Act to be as follows:

> It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Section 2 (a), (b), and (c), entitled "Administrative Agencies", authorize the President to establish such agencies and to appoint such officers and employees as he may find necessary to effectuate the policy of Title I, to delegate any of his functions and powers under that title to such officers, agents, and employees as he may designate or appoint, and to establish an industrial planning and research agency to aid in carrying out his functions under that title, and provides that Title I shall cease to be in effect, and any agencies established thereunder shall cease to exist at the expiration of two years after the date of the enactment of the Act, or sooner if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by Section 1 has ended.

Section 3 is entitled "Codes of Fair Competition." Section 3 (a), pursuant to which the Petroleum Code was approved by the President, reads as follows:

> Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section

> shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Section 3 (b) declares that the provisions of a code approved by the President shall be the standards of fair competition for the trade or industry in question, and provides that any violation of such standards "in any transaction in or affecting interstate commerce" shall be deemed an unfair method of competition in commerce, within the meaning of the Federal Trade Commission Act.

Section 3 (c) vests the several District Courts of the United States with jurisdiction in equity to restrain violations of any code approved under Title I.

Section 3 (f) provides as follows:

> When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a

> misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Section 9 (c) of the Act authorizes the President:

> to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. * * *

Violation of an order of the President issued under this provision is made punishable by fine of not to exceed $1,000, or imprisonment of not to exceed six months, or both.

Section 10 (a) authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of Title I and makes any violation of any such rule or regulation punishable by fine of not to exceed $500, or imprisonment of not to exceed six months, or both.

The foregoing are the only provisions of the Recovery Act directly involved in these cases.

Approval of the Petroleum Code.—On August 19, 1933, the President, pursuant to the authority conferred by Section 3 (a) of the Recovery Act, approved a Code of Fair Competition for the Petroleum Industry (Appendix A, *infra,* p. 208).

Article III of the Code provides in Sections 3, 4, and 5, as follows:

> Sec. 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly. (As modified September 13, 1933.)
>
> Sec. 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or Article III of this Code not be made within the State, or if the production of petroleum within any State ex-

ceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State, any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code. (As amended September 13, 1933, and September 25, 1934.)

SEC. 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State.

> If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code; and, further, persons engaged in the petroleum industry or any branch thereof in any State, may adopt a supplemental code, for that State to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this code.

By Executive Order of August 28, 1933, the President appointed the Secretary of the Interior to be the Administrator of the Petroleum Code and designated the Department of the Interior as the Federal agency provided for in the Code. (Appendix A, *infra,* p. 209.) As such Federal agency, the Department of the Interior has periodically estimated the amount of crude oil required to balance the national consumer demand, and has allotted the total among the producing States, including Texas.[10]

The Railroad Commission of Texas is the agency charged under the laws of that State with the duty of making allocations of production of crude oil to pools and wells within the State. The amount allotted to the State of Texas was certified by the Department of the Interior to the Railroad Commission of Texas, which thereupon allocated the share of the national demand thus assigned to Texas to the individual wells within the State. As previously stated (*supra*, p. 6), the validity of the orders of the Railroad Commission of Texas was attacked by the complainants in the *Amazon* case and upheld by a statutory three-judge court. No appeal was taken from this decision and the time for appeal has expired.

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[10] See Appendix A, *infra*, pp. 213–216, for orders estimating the national demand for September and October 1933, and making allocation thereof among the producing States.

Under the provisions of Section 4 of Article III of the Petroleum Code, production by any producer in Texas in excess of the quota thus assigned to him by the Railroad Commission of Texas is an unfair trade practice and a violation of the Code (*supra*, p. 13). It was the threatened prosecution by the Federal Government under the Recovery Act for violation of this section of the Code which the complainant producers in the *Amazon* case sought to enjoin.

Executive Order under Section 9 (c) and the Regulations.—On July 11, 1933, the President, pursuant to the power granted to him by Section 9 (c) of the Act, issued an Executive Order prohibiting the transportation in interstate or foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted by State law or valid regulation, or order prescribed thereunder. (Appendix A, *infra,* p. 217.) On July 14, 1933, the President, pursuant to Section 2 (b) of the Act, delegated to the Secretary of the Interior all of the powers vested in the President for the purpose of enforcing Section 9 (c) of the Act and the Executive Order of July 11, 1933, "including full authority to designate and appoint such agents, and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary." (Appendix A, *infra,* pp. 217–218.)

On July 15, 1933, pursuant to the authority thus conferred upon him and under Section 10 (a) of the Act, the Secretary of the Interior promulgated certain rules and regulations. Regulations IV, V, and VII are directly involved in these cases.[11]

Regulation IV required certain monthly[12] reports from all producers of petroleum; Regulation V required similar reports from refiners, shippers, and purchasers, and Regulation VII required that such producers and refiners, *inter alia,* maintain records available for inspection by agents of the Division of Investigations of the Department of the Interior, covering all transactions involving the production and transportation of petroleum and its products.

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[11] These Regulations were amended on July 25, 1933, August 2, 1933, and August 21, 1933. They are summarized above as they read when these suits were instituted. By the order issued August 2, 1933, Regulation IV was suspended except in States or areas where producers are required by State proration laws to make monthly reports, and Regulation V was suspended except as to purchasers, shippers, or refiners of petroleum derived in whole or in part from the East Texas and Oklahoma City areas. (Appendix A, *infra,* p. 222.)

[12] The statement in petitioners' brief in No. 135 (p. 6) that *daily* reports were required under Regulations IV and V is in error.

Regulations IV and V provided, prior to recent changes[13] hereinafter referred to, in summary form as follows:[14]

Regulation IV.—Producers of petroleum shall file statements under oath before the 15th day of each month with the Division of Investigations of the Department of the Interior showing for the preceding calendar month the state allowable for each property and well; the actual daily production in barrels; the persons to whom petroleum was delivered; the quantity involved in each delivery, and the amount of all petroleum in storage at the beginning and end of the calendar month.

Regulation V.—Purchasers, shippers, and refiners of petroleum shall file statements under oath by the fifteenth of each calendar month with the Division of Investigations of the Department of the Interior showing, for the preceding calendar month, the place and date of all receipts and deliveries of petroleum, and the names of the persons from whom it was received or to whom it was delivered; the amount received or delivered; the amount held in storage at the beginning and end of the calendar month; and such other detailed information necessary to identify the source of the petroleum or its products received, as may be required by the Division of Investigations of the Department of the Interior.

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[13] These changes do not appear to be material to these cases (*infra*, pp. 23–26).

[14] For exact text of the Regulations as they read when these suits were instituted see Appendix A, *infra*, pp. 218–221.

The reports required by Regulations IV and V at the time of the commencement of these suits were also to contain declarations on knowledge by producers and on information and belief by refiners that none of the petroleum produced or received had been produced or withdrawn from storage in violation of State laws, but this requirement was eliminated by an amendment made subsequent to the decision below. (*Infra*, p. 24.)

Proceedings in the courts below.—The bill in the *Amazon* case, as amended and supplemented (No. 260, R. 1–15, 54–58, 61–63), alleged, substantially, in the portions material here, that the complainants are producers of oil in the East Texas field; that the defendants have been demanding from them monthly reports (e. g. those required by Regulation IV, above described); are demanding that they produce from their wells only the amounts of oil permitted under the orders of the Railroad Commission of Texas; are making repeated inspection of their properties and gauging their tanks to ascertain the amount of oil produced by them, and have threatened to prosecute them criminally unless they comply with the orders of the Railroad Commission of Texas fixing their quotas and furnish the reports required. The bill alleged that the Recovery Act, and particularly Section 9 thereof, exceeds the power of Congress under the Constitution; that it contains an invalid delegation of legislative power; and that it violates the Fourth, Fifth, Eighth, Ninth, and Tenth Amendments to the Constitution, and alleged, further, that the orders of the President and of the Secretary of the Interior under the Act, and the acts of the defendants, are not authorized by the Recovery Act.

The bill of complaint (No. 135, R. 1–23) in the *Panama* case alleged, substantially, that the complainants are a producer and a refiner in the East Texas field; that they are not engaged in interstate commerce, with the exception, as to the refiner, of that portion of its refined products which it ships to other States; that the defendants are demanding that the complainant producer furnish the reports required by Regulation IV and that the complainant refiner furnish the reports required by Regulation V and are demanding that the complainants keep open for inspection adequate books and records as required by Regulation VII, and that the defendants have threatened to prosecute the complainants criminally for failure to comply with these Regulations. The complaint also alleged that the defendants have come upon the property of the complainants by force and gauged their tanks and dug up their pipe lines, and have otherwise interfered with their operations. The complaint alleged that Section 9 (c) of the Recovery Act exceeds the power of Congress under the Constitution and contains an unconstitutional delegation of legislative power, that the Regulations in question are in excess of the power of Congress to regulate interstate and foreign commerce, and that they violate the Fourth and Fifth Amendments to the Constitution.

The answers of the defendants, so far as material here, alleged, substantially, the validity of the Recovery Act, the pertinent provisions of the Petroleum Code, and the Regulations in question (No. 260, R. 15–54, 58–61; No. 135, R. 23–37). In the *Panama* case they deny entering upon the property of the complainants by force.

The *Panama* case came on for hearing on November 6, 1933, and the *Amazon* case on December 14, 1933. By stipulation it was agreed that evidence submitted by the parties in affidavit form upon these hearings for preliminary injunction should constitute the evidence upon which the court should finally determine the cases (No. 260, R. 63–64; No. 135, R. 131), and the issues were thereupon submitted to the court for decision upon the merits. The evidence thus submitted, so far as material to the issues presented in these cases, will be considered under the appropriate headings in the Argument.

On February 21, 1934, the District Court entered the decrees here in question. The decree in the *Panama* case (No. 135, R. 133–134) permanently enjoined the defendants from:

(1) "Enforcing any rule or regulation promulgated by the Secretary of the Interior or other designated agent under the National Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce"; and

(2) "Going upon or about the premises of complainants or in any wise interfering with them or molesting them in the conduct of their business by reason of the provisions of the National Industrial Recovery Act or regulations promulgated thereunder."

The decree in the *Amazon* case (No. 260 R. 131–135) permanently enjoined the defendants from:

(1) Enforcing or attempting to enforce against complainants, their agents, and employees, Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry;

(2) Requiring from complainants, their agents, servants, and employees, the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior, under Section 10 (a) of the National Industrial Recovery Act;

(3) Instituting any actions of a civil or criminal nature against complainants for violations of "the

aforesaid Code provisions and regulations above mentioned"; and from

(4) Going upon the property of complainants "under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned."

On March 17, 1934, the District Court filed its findings of fact and conclusions of law in both cases (No. 135, R. 134–138; No. 260, R. 135–139).

An appeal from both decrees having been taken by the defendants to the Circuit Court of Appeals for the Fifth Circuit, that court reversed the decrees and remanded the causes with directions to dismiss the bills (No. 260, R. 192; No. 135, R. 191).

The opinion of the Circuit Court of Appeals.—The Circuit Court of Appeals held in both cases that Section 9 (c) is valid and that the regulations thereunder are valid and enforceable against petitioners (No. 135, R. 178–190; No. 260, R. 180–192). In the *Amazon* case the court held that injunctive relief could not be had against the enforcement of Section 4 of Article III of the Code, because "an adequate remedy against abuse is afforded in the proceedings indicated by the statute [Sections 3 (b), 3 (c), and 3 (f)]" (No. 260, R. 188), although the court was also of the opinion that "the provision of the Code thus enforced [e. g., as provided in Sections 3 (b), 3 (c), and 3 (f)] does not appear to be unconstitutional" (No. 260, R. 188).

In view of the uncontroverted evidence establishing that petitioners in No. 260 (the *Amazon* case) were in danger at the time of the filing of the suit of criminal prosecution for violation of the Code provision (No. 260, R. 71–72, 182), the opinion of the court below, so far as it is based on the impropriety of injunctive relief, does not appear to be in accord with other decisions. See *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 238; *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, 621–622.

EFFECT ON THESE CASES OF RECENT CHANGES IN THE REGULATIONS AND THE CODE

As to the Regulations.—Since the decisions below were handed down, the regulations involved herein have been amended. The Government wishes to call the attention of the Court to these changes and their possible bearing upon these cases.

The Secretary of the Interior by an order dated July 20, 1934 (as amended by his order of July 24, 1934), amended the prior regulations promulgated by him to carry out the provisions of Section 9 (c) by substituting therefor new regulations insofar as future transactions are concerned. The new regulations are set forth in Appendix A, *infra,* pp. 223–228.

The new regulations embody substantially all the requirements of the three earlier regulations (IV, V, VII) under attack in these cases. The earlier regulations required monthly reports by producers of petroleum (Reg. IV), and by purchasers, shippers, and refiners of petroleum (Reg. V), containing certain data. The new regulations require such producers, purchasers, shippers, and refiners to keep and preserve the same and other data (Reg. V, A, B) and to file reports with the Secretary of the Interior from time to time, as called for by him[15] (Reg. VI). The only obligation imposed by the earlier regulations and not by the present ones was that the reports of producers, purchasers, etc., should contain a declaration that none of the petroleum which they have produced and shipped, or received and disposed of, was produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order prescribed thereunder. The provisions of the earlier regulations (Reg. VII) that all persons subject to Section 9 (c) and to regulations issued thereunder shall keep and maintain, available for inspection by the Department of the Interior, adequate books and records of all transactions involving the production and transportation of petroleum, are continued in force by the new regulations (Regs. IV and V).

A suit attacking the validity of an order by a Federal regulatory body does not become moot because of expiration of the order, where the order is a matter of public interest and is likely to be repeated or renewed. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, 514–516; *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, 452. See also *McGrain* v. *Daugherty,* 273 U. S. 135, 181–182. *A fortiori* the case is not moot where, as here, the order under attack is merely modified and substantially all of its pertinent provisions are continued in effect by the amending order.

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[15] An order issued on the same day (July 20, 1934) that the new regulations were promulgated called for monthly reports from producers and refiners, *inter alia*, and approved forms for such reports (Appendix A, *infra*, p. 228). These forms require all of the information demanded by the earlier regulations (Appendix A, *infra*, following p. 228).

Furthermore, the suit was brought to enjoin prosecution of past as well as future violations of the regulations (No. 135, R. 2, 9; No. 260, R. 15). Petitioners' liability for prior violations of the original regulations is still at issue in this case, since the new regulations promulgated by the Secretary on July 20, 1934, are substituted for the earlier ones only "insofar as future transactions thereby or hereby regulated are concerned" (Appendix A, *infra,* p. 223). In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, *supra,* which held that a suit to enjoin an order of the Interstate Commerce Commission fixing reasonable transportation rates did not become moot upon expiration of the order, the Court referred (p. 452) to "the possible liability for reparation to which the railroads might be subjected if the legality of the order were not determined."

Apart from the foregoing considerations, the validity of Section 9 (c) is an issue in these cases not affected by the change in the regulations. The complaint in both cases alleged the invalidity of this section (No. 135, R. 3; No. 260, R. 12). The decree entered by the District Court in the *Panama* case enjoined the enforcement of "any rule or regulation promulgated by the Secretary of the Interior" under the National Industrial Recovery Act insofar as it applies to the production, refining, storage, or transportation of petroleum in intrastate commerce (No. 135, R. 133), and also enjoined interfering in any way with the conduct of petitioners' business by reason of the provisions of that Act "or regulations promulgated thereunder" (No. 135, R. 134). The Circuit Court of Appeals sustained the validity of Section 9 (c) (No. 135, R. 178–190; No. 260, R. 180–192), and one of the grounds upon which petitioners in both cases relied for the allowance of a writ of certiorari is that this holding is erroneous.

As to the Code provisions.—Prior to the allowance of the writ of certiorari in the *Amazon* case, the attention of the Court was directed to the omission of the second paragraph of Section 4 of Article III of the Code in the Executive Order of September 13, 1933, which made various modifications of the Code, and to the reinstatement of this paragraph as a part of the Code by Executive Order of September 25, 1934, certified copy of which was filed with the Clerk of this Court. (See Respondents' Memorandum and Supplemental Memorandum in No. 260.) It was stated that the Government cannot and therefore does not intend to prosecute petitioners or other producers of oil in Texas, criminally or otherwise, for exceeding, at any time prior to September 25, 1934, the quotas of production assigned to them under the laws of Texas. But, as further stated, the Government does intend to prosecute petitioners or other producers if they produce or have produced in excess of such quotas after September 25, 1934.

The Government believes that the Court may, on the record in this case, consider and determine the validity of Section 4 of Article III, as thus amended by the Executive Order of September 25, 1934. See *Texas Co.* v. *Brown,* 258 U. S. 466, 474; *Pugh* v. *McCormick,* 14 Wall. 361, 374; *Watts, Watts & Company* v. *Unione Austriaca &c.,* 248 U. S. 9, 21; *American Foundries* v. *Tri-City Council,* 257 U. S. 184, 201. Both courts below considered the case on the assumption that the second paragraph of this section was a part of the Code. Moreover, the considerations bearing upon the validity of this paragraph are in no material respects now different from those existing at the time of the original adoption of the Code. Finally, petitioners have assumed during the entire course of this case that this paragraph had not been eliminated from the Code (see Pet. pp. 25–26) and have informed the Government that they desire the Court on this record to consider and determine the validity of this paragraph.

It is submitted that there is sufficient basis for jurisdiction in equity in this case to restrain the enforcement of the second paragraph of Section 4, if invalid, despite the fact that it has been operative only since September 25, 1934. See *Hygrade Provision Company* v. *Sherman,* 266 U. S. 497, 499–500; *Terrace* v. *Thompson,* 263 U. S. 197, 212, 214–216; *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 620–621; *Pierce* v. *Society of Sisters,* 268 U. S. 510; *Euclid* v. *Ambler Realty Company,* 272 U. S. 365.

SUMMARY OF ARGUMENT

I

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE (ARTICLE III, SECS. 3, 4, AND 5) ARE VALID REGULATIONS OF COMMERCE AMONG THE STATES AND WITH FOREIGN NATIONS

Congress has plenary power under the Constitution to regulate commerce among the States and with foreign nations. This power is not confined to the regulation of transactions occurring in interstate and foreign commerce but extends to any and all kinds of activity which substantially burden or affect such commerce. The transactions subject to regulation by Congress may often include matters which the States may regulate, but if conflict should arise this Court has held that State law must yield to the paramount Federal power (*infra,* p. 46). The decision of this Court in *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S.

210, sustaining the power of the States to restrict production of oil, does not, therefore, preclude the exercise of Federal power, providing that conditions attending the production of oil are shown to have a direct and substantial effect upon interstate commerce in petroleum and its products.

The production-control provisions of the Petroleum Code seek to stabilize the interstate market in petroleum and its products through limitation of the production of petroleum to the national consumer demand. The Code provides for the ascertainment by a Federal agency of the national demand for petroleum and the allocation thereof equitably among the producing States. It is provided that those States, such as Texas, which have official agencies charged with prorating production, shall apportion the share of the national demand assigned to them among the individual wells and properties within the State. Production in excess of quotas assigned by a State is made a violation of the Code. The quotas involved in the *Amazon* case were assigned to petitioners under these provisions of the Code by the Railroad Commission of Texas, the agency charged with the administration of the conservation laws of that State.

A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce

The petroleum industry is national in scope and importance. Commerce in petroleum and its products is carried on between all of the States and between the United States and foreign nations.

At least ninety percent of the products of this industry is shipped into interstate and foreign commerce. The greater part of the nation's crude petroleum is produced in Texas, Oklahoma, California, and other Western States and is consumed in the centers of population in the East and Middle West. Crude oil produced in each of the eighteen producing States competes for the national market with crude from every other producing State, and there is a similar competition in the marketing of petroleum products between the many refining areas in the country. Practically all crude petroleum moves from the producing areas to market through great interconnected pipe-line systems extending across many States. In the course of the movement of oil from the well to the ultimate consumer, that portion of the oil or its products in intrastate commerce is physically commingled with that destined for other States.

A large portion of the industry is controlled by a number of major integrated companies whose activities extend throughout all branches of the industry and over many different States. Fierce competition prevails in the industry, particularly in the retail market. Because of the wide-spread activities of the integrated companies and the speed with which crude oil moves from the well to the consumer, the price structure of crude oil and its products is quickly responsive to conditions in nearly any branch of the industry or any section of the country.

B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products

A combination of singular geological, legal, and economic factors governing the production of crude oil in this country has compelled excessive production of oil. The fugitive nature of oil, when combined with the law of capture and the leasing system under which production of oil is carried on, has led to a wild race between the many separate operators in an oil field to capture as much oil as possible from their own and adjacent properties, regardless of the demands of the market. The rush to produce has been intensified by the cost advantage enjoyed by flush fields as against those of settled production and by the abnormally large production of the first wells drilled. Such excessive production has resulted in extreme declines in the price of crude oil and its products throughout the country. The law of supply and demand has, in this industry, failed to assert a corrective influence upon production; on the contrary, decline in price has accelerated production, with consequent further and further price declines. The inelastic nature of the demand for petroleum in recent years has been an aggravating factor in such price declines.

Prior to 1926 fear of a scarcity of oil and the increasing demand for petroleum products operated to some extent as a stabilizing influence upon the market. The discovery after 1926 of a series of prolific new pools replaced fear of scarcity by knowledge of enormous excess capacity and caused the development of a potential production many millions of barrels in excess of current consumption. In 1931 and again in 1933 the interstate market in petroleum and its products, the stability of which had been continuously threatened since 1926 by the production from these new fields, was completely demoralized, primarily by reason of the excessive production of the Oklahoma City and East Texas pools. Production from these two fields broke the crude-oil price structure in every producing area in the country, driving prices far below the cost of production, and causing a parallel collapse of the price of refined products. The tremendous surplus stocks of crude oil and gasoline which were accumulated and the inelastic nature of the demand for gasoline led to vicious competitive excesses in the struggle between retail marketers for gallonage. The huge amounts of oil produced in violation of State law exerted a particularly depressing effect upon the interstate market because of the large discounts at which such "hot oil" or its products were offered for sale in interstate commerce.

Producers in the "stripper" or pumping well areas were drastically affected by the collapse of the price structure resulting from the excessive production of the flush fields. Prices in the "stripper" well areas were driven far below the cost of producing oil from such wells, causing many of them to be abandoned, with the permanent loss of oil reserves. Cheap oil from the flush fields deprived many "stripper" well areas of their normal interstate and foreign markets and threatened to monopolize the entire market of most of the "stripper" well areas in the country. The "stripper" fields contain a large proportion of the total oil reserves of the nation; the shutting down of these fields would involve a serious loss of oil reserves.

C. The fruitless efforts of the industry and of the States to control the competitive conditions attending the production of oil demonstrate the interstate unity of the oil industry and the need for Federal control

The efforts of the industry and the States to control the production of oil have failed to prevent the collapse of the national market. The facility with which oil moves in interstate commerce from different sources of supply has made it impossible for proration to operate successfully as a local matter. Any field or State which refused to restrict production to a fair share of the national demand would merely absorb a part of the market of other fields or States which attempted such restriction. Efforts to coordinate the activities of the producing States upon a national scale proved unsuccessful. By the spring of 1933 both the industry and the States had come to realize that stabilization of the market could only be achieved by Federal control of production.

D. Under the decisions of this Court the production-control provisions of the Petroleum Code are a valid exercise of the commerce power of Congress

Unrestricted production from the flush fields has had a direct and substantial effect upon interstate commerce in petroleum and its products: (1) It has caused violent fluctuations throughout the country in the price of crude oil and its products, and (2) it has absorbed part of the market of the "stripper" well fields, thus diverting the normal flow of oil from the "stripper" areas. Such direct and substantial effects upon interstate commerce afford sufficient basis for the Federal control of oil production embodied in the Petroleum Code.

This Court has held that local activity which directly affects the price of commodities moving in interstate commerce may be regulated by Congress. *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; *United States* v. *Patten,* 226 U. S. 525. See *Standard Oil Co. (Indiana)* v. *United States,* 283 U. S. 163, 169. Local acts, such as production or manufacture, which occur before interstate commerce has commenced, are nevertheless subject to the Federal commerce power when they directly affect interstate commerce. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Standard Oil Co. (Indiana)* v. *United States, supra,* p. 169. Decisions of this Court have sustained regulations of local acts which affected interstate commerce much less directly than does the volume of oil produced in the flush fields. *Stafford* v. *Wallace,* 258 U. S.

495; *Colorado* v. *United States,* 271 U. S. 153; *Florida* v. *United States,* 292 U. S. 1; *United States* v. *Ferger,* 250 U. S. 199; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295.

In the Sherman Act Congress sought to prevent the exaction of monopoly prices from the consuming public, and it has been held that Congress had the power in carrying out this statutory purpose to prohibit local acts, including interruption of or restraint upon production, which affected interstate commerce directly or substantially. In the Recovery Act Congress adopted the view that interstate commerce required protection from overproduction or nonremunerative prices. These Acts thus represent different economic policies. But so far as concerns the kind of activity subject to Federal regulation there can be no difference in constitutional power because of the difference in economic policies. See *Northern Securities Co.* v. *United States,* 193 U. S. 197, 337.

The Federal Government may properly seek to protect the economic welfare of an industry which is predominantly interstate. Where, as in the case of the oil industry, regulation of the purely interstate aspects of the business cannot be accomplished without control of local acts, such as production, regulation of such local acts is within the Federal commerce power. *Minnesota Rate Cases,* 230 U. S. 352; *Houston, E. & W. Texas Railway Co.* v. *United States,* 234 U. S. 342. This Court has recognized that the practical course of interstate business has expanded with the growth of the country. *Stafford* v. *Wallace, supra,* pp. 518–519. With the development of industries organized on a national scale and the extraordinary increase in the facilities of transportation, regulation of many intrastate aspects of such industries may be necessary for the protection of interstate commerce.

The purpose of Congress in the Recovery Act was to remove obstructions to interstate and foreign commerce resulting from the general industrial depression. See *Wilson* v. *New,* 243 U. S. 332, 348. The evident purpose of the Act is sufficient to distinguish it from the child labor law involved in *Hammer* v. *Dagenhart,* 247 U. S. 251, in which this Court found that Congress was not attempting to regulate interstate commerce, but was in fact seeking to control the social policies of the States.

II

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE REASONABLE REGULATIONS DESIGNED TO ACHIEVE PROPER OBJECTIVES OF THE FEDERAL GOVERNMENT, OF VITAL CONCERN TO THE NATION; THEY DO NOT, THEREFORE, INVOLVE ANY INFRINGEMENT OF THE RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

The Fifth Amendment does "not prohibit governmental regulation for the public welfare", but demands only that the law shall not be unreasonable and that the means selected shall have a real relation "to the object sought to be attained."

Nebbia v. *New York,* 291 U. S. 502, 525. The end sought by the Recovery Act was to free interstate and foreign commerce from obstructions brought on by a grave industrial emergency requiring prompt remedial measures. The formulation of codes of fair competition provided for in the Act, permitting simultaneous action with respect to many industries, was a reasonable and well-adapted means of regulating the hundreds of trades and industries whose activities had so injuriously affected the free flow of interstate commerce.

The petroleum industry was in particular need of immediate remedial measures because of the complete collapse of its market structure resulting from overproduction in the flush fields. The severe decline in prices had brought about tremendous wastes of oil. Such wastes were of vital national concern because of the limited supply of this important irreplaceable natural resource upon which agencies of transportation depend for an economic supply of fuel, as does the nation in time of war.

The Petroleum Code was adopted by the industry and approved by the President in order to carry out, with respect to this industry, the purposes of Congress declared in the Recovery Act. It was sought through control of production to restore stability to the market as a means of eliminating wastes and other abuses resulting from a demoralized market. The production-control provisions of the Code are reasonable regulations having a "real and substantial relation to the object sought to be attained." *Nebbia* v. *New York, supra,* p. 525.

The Court has sustained the power of the States to restrict production to market demand as against the claim, analagous to that now made by petitioners, that such restriction involved a violation of the due process clause of the Fourteenth Amendment. *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210.

III

THE AUTHORIZATION BY CONGRESS OF THE PRESIDENT TO APPROVE CODES OF FAIR COMPETITION IS NOT AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWERS

The extent to which Congress is permitted to delegate authority must be determined essentially by the necessities of practical administration. The emphasis upon practical considerations in determining whether a Congressional delegation of authority is constitutional is found in each of the leading decisions of this Court. *Wayman* v. *Southard,* 10 Wheat. 1; *Field* v. *Clark,* 143 U. S. 649; *Buttfield* v. *Stranahan,* 192 U. S. 470; *Union Bridge Co.* v. *United States,* 204 U. S. 364; *United States* v. *Grimaud,* 220 U. S. 506; *Hampton & Co.* v. *United States,* 276 U. S. 394.

The magnitude of the subject regulated in the Recovery Act, the need for speed and flexibility in carrying out the statutory purpose, and the emergency situation confronting Congress in the spring of 1933, made it essential that a delegation such as is embodied in the Recovery Act be employed. It would have been impossible for Congress to prescribe detailed regulations applicable to trades and industries generally. Moreover, the attempt at such legislation would have delayed other measures which the public welfare demanded. Congress was confronted with the alternative either of not legislating effectively or of making a broad delegation.

The phrase "fair competition" in the Recovery Act is given substance and meaning by the context in which it is used. See *New York Central Securities Corporation* v. *United States,* 287 U. S. 12, 24, 25; *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.,* 289 U. S. 266, 285. This phrase, construed in the light of the purposes set forth in Section 1 of the Recovery Act and given expression in other sections of the Act, establishes just as intelligible a standard as the expressions "unfair methods of competition", "public interest", "public necessity and convenience", and "just and reasonable" found in other statutes which have uniformly been sustained by this Court.

IV

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE AUTHORIZED BY THE RECOVERY ACT

Production in excess of quotas assigned by a State agency pursuant to the provisions of the Petroleum Code is "unfair" (*Federal Trade Commission* v. *Keppel & Bro., Inc.,* 291 U. S. 304) and concerns "competition" and may, therefore, be prohibited in a code of fair competition approved under the Recovery Act. The competition of industrial concerns may extend to any step in the industrial process, including production of raw materials. This is particularly so in the case of the oil industry. Various provisions of the Recovery Act evidence the intention of Congress that codes should contain regulation of production where necessary to carry out the purposes of the Act. The consistent administrative construction of the Act also supports the conclusion that code provisions regulating production are authorized. Such a construction of the Act by those charged with administering it "will not be overturned except for very cogent reasons." *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315. Congress has, in effect, ratified the restriction of production contained in the Petroleum Code, since it subsequently enacted a statute taxing the sale and processing of crude oil, a secondary purpose of which was to assist Federal officers in enforcing the code provisions regulating production.

V

SECTION 9 (C) OF THE RECOVERY ACT IS CONSTITUTIONAL.

A. Section 9 (c) is within the commerce power of Congress

Section 9 (c) authorizing the President to prohibit transportation in interstate and foreign commerce of oil or its products produced or withdrawn from storage in violation of State law is a valid regulation of interstate commerce. The transportation in interstate commerce of "hot" oil or its products contributes to harmful results, both in the States where "hot" oil is produced and the States to which it is transported. Prohibition of the use of interstate commerce as an instrumentality for the promotion of violation of State laws, or for the furtherance of injurious or harmful results in other States, has been consistently upheld. *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311; *Brooks* v. *United States,* 267 U. S. 432; *Champion* v. *Ames,* 188 U. S. 321. The statute involved in *Hammer* v. *Dagenhart,* 247 U. S. 251, is clearly distinguishable from Section 9 (c), since (1) no showing was made in *Hammer* v. *Dagenhart* that the transportation there prohibited produced harmful results in other States, and (2) Section 9 (c) clearly operates in aid of State laws and cannot, therefore, be regarded as invading the power of the States.

B. Section 9 (c) is not an unconstitutional delegation of legislative authority

The President's discretion under this section is limited to determining when the prohibition shall take effect. Delegations of this character have uniformly been upheld. *Hampton & Co.* v. *United States,* 276 U. S. 394; *Field* v. *Clark,* 143 U. S. 649. The general policies and purposes of the Recovery Act, of which Section 9 (c) is an integral part, govern the President's determination of the time or times during which the prohibition against the transportation of "hot" oil shall be applied.

VI

THE REGULATIONS HERE IN QUESTION ARE IN ALL RESPECTS VALID AND CONSTITUTIONAL

A. The requirement of monthly reports from producers (Reg. IV) and refiners (Reg. V) and the maintenance by them of books and records open to inspection (Reg. VII) is authorized by Section 10 (a) of the Recovery Act as necessary to the enforcement of Section 9 (c).

The enormous extent of the East Texas field, the intricate gathering and pipe-line systems in the field, the large number of wells and operators, the intermingling of legal and illegal oil in the course of transportation from the field, and the numerous devices employed to conceal illegal operations make it impossible, as a practical matter, to detect movements in interstate commerce of "hot" oil or its products by ordinary policing methods. The only practicable and effective means of tracing the movement of "hot" oil in interstate commerce is by a complete system of reports from all persons handling oil from the well to the interstate carrier.

Reports from all producers in the field are essential since they alone can report facts concerning the legality of their production. It is impossible to distinguish between producers, and to require reports only from those whose oil moves in interstate commerce. Producers cannot ordinarily know either the immediate or ultimate destination of their oil. Eighty-five percent of the oil from the field flows eventually into interstate and foreign commerce and every well in the field contributes to this stream of commerce to some extent.

Reports from all refiners in the field are likewise essential in order that it may be determined whether the products which they ship into interstate commerce were manufactured from "hot" oil. Most, if not all, refineries in the field ship part of their products in interstate commerce. The refineries in East Texas constitute the principal outlet of illegal petroleum from the field.

The requirement that books and records be maintained open to inspection is a necessary means of checking the accuracy of the reports. The reporting system, supplemented by the inspection of books and records, serves not only to detect actual violations of Section 9 (c) but also to deter future violations.

B. The regulations impose no burden or inconvenience. They are clearly not unreasonable, arbitrary, or capricious.

C. Although the regulations require information as to intrastate transactions, they do not exceed the power of Congress under the commerce clause, since the information sought is necessary to the enforcement of Section 9 (c), a valid regulation of interstate commerce. *Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194.

D. The regulations do not violate the prohibition against unreasonable searches and seizures in the Fourth Amendment nor the privilege against self-incrimination in the Fifth Amendment. The language and history of these amendments and the decisions of this Court make it clear that these constitutional guarantees were not intended to apply to such matters as the filing of reports or the keeping of books for inspection as incidental to the enforcement of a regulatory statute. *Flint* v. *Stone Tracy Co.,* 220 U. S. 107; *Baltimore and Ohio R. R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Co., supra; Chicago Board of Trade* v. *Olsen,* 262 U. S. 1. The reports and inspections provided for are not merely preliminary steps in the preparation of court action against the persons subject to the regulations. Reports of those complying with the law aid in detecting violations by others without in any way incriminating the former.

ARGUMENT

I

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE (ARTICLE III, SECS. 3, 4, AND 5) ARE VALID REGULATIONS OF COMMERCE AMONG THE STATES AND WITH FOREIGN NATIONS

The commerce clause of the Constitution, as this Court has frequently stated, vests Congress with complete and plenary power to regulate commerce among the several States and with foreign nations.

This Court has said that "the power to regulate commerce is the power to enact 'all appropriate legislation' for its protection and advancement * * *; to adopt measures 'to promote its growth and insure its safety' * * *; 'to foster, protect, control, and restrain.'" *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570.

The full scope of this power has been affirmed by this Court in many cases, and it is now settled law that this power is not confined to the regulation of transactions occurring in interstate and foreign commerce, but extends to any and all kinds of activity which substantially burden or affect such commerce (*Swift & Co.* v. *United States,* 196 U. S. 375; *Minnesota Rate Cases,* 230 U. S. 352; *Houston, E. & W. Texas Ry.* v. *United States,* 234 U. S. 342; *Stafford* v. *Wallace,* 258 U. S. 495; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1) even though such activity is in itself not commerce at all (*United States* v. *Ferger,* 250 U. S. 199; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295). Moreover, it is immaterial whether the activity has occurred wholly within a State before movement in interstate commerce has commenced. *Local 167* v. *United States,* 291 U. S. 293; *United States* v. *Reading Co.,* 226 U. S. 324; *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295.

The transactions thus subject to regulation by Congress may often include matters which may also be regulated by the States within their police power or taxed locally. In such cases, if the state regulation does not burden interstate commerce or in any way conflict with the Federal law, both Federal and State regulations may be in force at the same time. Compare *Bacon* v. *Illinois,* 227 U. S. 504, and *Dickson* v. *Uhlmann Grain Co.,* 288 U. S. 188, with *Chicago Board of Trade* v. *Olsen, supra; Minnesota* v. *Blasius,* 290 U. S. 1, with *Stafford* v. *Wallace, supra; Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172, with *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295. If conflict should arise, however, or if Congress has manifested any intention completely to occupy the field, this Court has held that State law must yield to the paramount Federal power. *Minnesota Rate Cases, supra; Houston, E. & W. Texas Ry.* v. *United States, supra; Florida* v. *United States,* 292 U. S. 1; *Adams Express Co.* v. *Croninger,* 226 U. S. 491. "The rule which marks the point at which state taxation or regulation becomes permissible" does not necessarily prevent "interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the States." *Swift and Co.* v. *United States, supra,* p. 400; *Stafford* v. *Wallace, supra,* p. 525. Such cases as *Kidd* v. *Pearson,* 128 U. S. 1, *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245, *Oliver Iron Mining Co.* v. *Lord, supra, Hope Natural Gas Co.* v. *Hall,* 274 U. S. 284, *Utah Power and Light Co.* v. *Pfost,* 286 U. S. 165, and *Chassaniel* v. *Greenwood,* 291 U. S. 584, which define the permissible limits of action by the States, are, therefore, not applicable.

Thus the power of the States under their police power to restrict the production of oil (*Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210) does not preclude the exercise of Federal power over the same subject matter if the conditions surrounding the production of oil afford a reasonable basis for the view that Federal control of petroleum production is necessary for the regulation of interstate commerce in petroleum and its products.

The production-control provisions of the Petroleum Code (Article III, Sections 3, 4, and 5, *supra,* pp. 12–14) have for their primary purpose the stabilization of the interstate market in petroleum and its products through the limitation of production of crude petroleum to the amount necessary to meet the national consumptive demand for petroleum products. This demand, once ascertained, is apportioned equitably among the States (Article III, Section 3). As large a measure of control as is possible is left to the States themselves. Thus it is provided that the subdivision into quotas within a State of the share of the national demand assigned to it is to be made within the State (Article III, Section 4). No provision is made for Federal determination of quotas within a State unless the States themselves fail to establish such quotas (Article III, Sections 4 and 5), or unless production within a State exceeds the share of the national demand assigned to it (Article III, Section 4). Under these provisions the quotas under which the petitioners in the *Amazon* case operate have been assigned to them, not by the Federal Government, but by the State of Texas through its administrative agency, the Railroad Commission. The Petroleum Code, in effect, adopts the quotas thus assigned and makes production in excess of such quotas a violation of the Code (Article III, Section 4, second paragraph).

This case thus squarely presents the issue as to whether the Federal Government may, under the commerce clause, regulate the amount of oil produced throughout the nation. The determination of this issue depends essentially upon questions of economic fact involving a consideration of the structure of the petroleum industry, the conditions governing the production of oil, and the effect of such conditions upon interstate commerce in petroleum and its products.

A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce

National scope and importance of the industry.[16]—The petroleum industry is nation-wide in scope. It is the third largest industry in the Nation (R. 79),[17] representing a capital investment of from twelve to fifteen billions of dollars (R. 79, 83), and engaging the services of over a million employees (R. 79). Crude petroleum is produced in substantial quantities in eighteen States (R. 79; Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 306). In these States there are approximately 325,000 wells, located on over four million acres of land,

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[16] In this and other parts of the brief citation is made to material not included in the record. All of the non-record citations are to published material falling into two main classes:

(1) Publications of Federal agencies: House and Senate Reports and Documents; hearings before Senate and House Committees; publications of the Federal Oil Conservation

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Board; statistical publications of the United States Bureau of Mines and other Federal agencies.

(2) Publications of non-Federal agencies: Reports of the Railroad Commission of Texas; publications of the American Institute of Mining and Metallurgical Engineers and numerous trade journals of general use in the oil industry.

These publications contain matters of common knowledge to persons familiar with the oil industry and are generally regarded as reliable sources of information concerning this industry. The Government believes that the nonrecord material referred to in this brief may properly be considered by the Court in determining whether a reasonable basis exists for the provisions of the Recovery Act, the Petroleum Code, and the Regulations here in question. See *Muller* v. *Oregon*, 208 U. S. 412, 419; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 286–287 (dissent); *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 16; *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 422, 444; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 10–15; *Nebbia* v. *New York*, 291 U. S. 502; *Burns Baking Company* v. *Bryan*, 264 U. S. 504, 514, 519; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 10.

Some of the above-described material is referred to or quoted in the brief proper. Excerpts from some of the more important sources cited are reprinted in a separately printed appendix to the brief.

[17] The record references under Point I of this brief are to the record in No. 260 (the *Amazon* case), which alone involves the validity of the code provisions.

and there are about five hundred refineries and 325,000 marketing outlets employed in the industry (*Id.*, p. 299; R. 83). Commerce in petroleum and the products into which it is refined is carried on between all the States in the United States, and between the United States and foreign nations (R. 79). The United States consumes about 63 percent of the world's total supply of petroleum, and produces 60 percent of the world's total production, producing 785,000,000 out of 1,311,000,000 barrels in 1932.[18]

Interstate commerce and competition between producing areas.—Crude oil produced in each State competes for the national market with crude from every other producing State (Senate Document No. 61, 70th Cong., 1st Sess. (Federal Trade Commission, Report on Petroleum Industry, Prices, Profits, and Competition), p. 128 *et seq.*). At least 90 percent of the petroleum and its products produced in the United States is shipped into interstate and foreign commerce, and is produced with the expectation that it will be so shipped (R. 80). Ninety-five percent of the nation's crude oil is produced in Texas, California, Kansas, Oklahoma, Louisiana, and in the States bordering the east of the Rocky Mountains (R. 83), and a substantial part of this crude oil is brought to the large consuming areas in the East where it is refined (R. 83). The products thus manufactured enter into competition with those refined from crude oil produced in the Eastern States (R. 92). Mid-Continent crude oil is transported by pipe line to Pennsylvania, Ohio, and Indiana, where it is similarly refined and the products placed in competition with those refined from the crude produced in such States (R. 92).

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[18] The United States in 1932 consumed 835,482,000 barrels out of a total world production of 1,311,377,000, or 63.7 percent of the total. (Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, pp. 299–300.) In 1932 the United States produced 59.9 percent of the total. (*Id.*)

In 1932 out of a total production of crude oil of 781,845,000[10] barrels only 41,500,000 were produced in States east of the Mississippi, whereas California, Oklahoma, and Texas together produced over 84 percent of the total, and Texas alone produced over 311,000,000 barrels (R. 93). In that year 300,000,000 barrels of domestic crude, or 38 percent of the total production, were refined in the States east of the Mississippi, which area has 70 percent of the population of the country and of the automobile registration (R. 93). The northeastern States alone consume about 36 percent of the total petroleum products (R. 83).

In 1932 Texas delivered 46 percent of the crude produced by it to States east of the Mississippi (R.

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[10] The figures for 1932 in the Record were based upon preliminary Bureau of Mines reports made early in 1933. The final figures, which differ only slightly, are found in Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 303, since published.

93). It produced 22 percent of the total gasoline refined in the United States, of which it delivered 80 percent to other States (R. 93). Approximately 85 percent of the crude oil and its products produced in Texas moves into interstate and foreign commerce (R. 84, 111, 117), and almost every producer and refiner in Texas contributes to this stream of commerce to some extent (R. 84).

Dependence upon oil of agencies of commerce.—All agencies of transportation require the products of this industry for fuel or lubrication. All of the millions of automobiles, trucks, buses, and airplanes, and a large proportion of railroads and ships use petroleum products for fuel, as does a great deal of the installed horsepower of the United States (Bureau of Mines, Mineral Market Report (No. M. M. S. 154, November 16, 1932),[20] Appendix B, p. 11).

Movement of petroleum in interstate commerce—the pipe-line system.—Practically all petroleum normally passes in a continuous movement from the underground source of supply to market through great interconnected pipe-line systems. When crude oil leaves the ground it generally passes into temporary storage tanks near the wells, from which it passes into gathering pipe-line systems serving the field (R. 79, 114–117; Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 99, Appendix B, p. 9; Petroleum Facts and Figures (American Petroleum Institute, 4th ed. 1931), pp. 111, 112). The great bulk of the crude then moves into connected trunk pipe-line systems, which carry it to major refinery centers or to ocean terminals for transshipment by tanker (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 7, Appendix B, p. 4; House Report No. 2192, 72nd Cong. 2nd Sess. (Report on Pipe Lines), Map opposite p. lviii, Appendix B, p. 45). In some instances the oil moves from the gathering lines to loading racks for railroad distribution or to refineries located in or near the field, but the great bulk of the oil is transported though the major trunk pipe lines.[21] The interconnected character and the extent of the pipe-line network is graphically illustrated by the map contained in the Report on Pipe Lines, *supra,* which appears in Appendix B at page 45. From this it appears that several pipe lines extend in an arc across the country from Texas, northeasterly through Oklahoma, Kansas, Missouri, and Illinois, and then due easterly through Indiana, Ohio, Pennsylvania, and New Jersey (R. 116). Lines from Wyoming, Louisiana, and Arkansas connect with this main trunk-line system (R. 116). In Texas and Oklahoma there is a network of lines, large and small, joining the main trunk lines to the north, and others leading down to tidewater on the Gulf coast (R. 116). California has its own system linking its fields with the refineries at tidewater (R. 116).

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[20] Virtually the entire production of gasoline, the principal product of crude petroleum, is consumed by motor vehicles. Almost one-half of the fuel and gas oil, the next largest derivative of crude petroleum, is consumed by railroads, steamships, and United States Navy and Army transports, which in 1931 consumed 150,000,000 out of a total of 356,000,000 barrels distributed in the United States in that year (Bureau of Mines, Mineral Market Reports (No. M. M. S. 154, November 16, 1932), Appendix B, p. 11).

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[21] The report of the Bureau of Mines for September 1934 (Department of the Interior, Press Release, November 1, 1934) shows that of 72,148,000 barrels total deliveries, 53,304,000 were by pipe line, 16,596,000 by ship, and 2,248,000 by railroad or truck. A large proportion of the oil shipped by vessel was delivered to the coast through pipe lines.

Of the 73 major pipe-line companies 21 are engaged exclusively in interstate commerce (R. 114; Report on Pipe Lines, *supra,* at p. lxxi). Those pipe lines engaged in both intrastate and interstate transportation have both operations so intermingled that it is impossible to separate them; in many operations the same pipe lines and pumping equipment are used for transporting oil both in interstate and intrastate commerce; and frequently oil originating in a given pool will move through the same pipe line in both interstate and intrastate commerce, part being delivered locally and the rest in interstate commerce. (R. 114, 115.)

Movements from East Texas.—There are thirteen pipe lines transporting crude oil from the East Texas field to various parts of the United States (R. 116). It is apparent from the map referred to above that the great bulk of the petroleum from this field moves through pipe lines north into the Mid-Continent market, or south to Lousiana and Texas Gulf ports, from which it is shipped to the East Coast markets.[22] Even that portion of the crude oil moving to refineries located in the East Texas field is not out of the stream of interstate movement; although a small part of the products of oil moving to these refineries, chiefly gasoline, may be consumed locally, the major portion of the products actually move into interstate commerce (R. 117).

Intermingling of crude oil in inter- and intrastate commerce.—It is apparent that after oil leaves the well it is impossible to ascertain the ultimate destination of the crude oil, or of the many products which will ultimately be refined from it (R. 80). Some part of practically all crude petroleum is moved into interstate commerce in one continuous process. As soon as crude leaves the well for the storage tanks that portion destined for intrastate commerce is mingled with the larger portion destined to move in interstate commerce, and it is further commingled when it passes into the gathering pipe lines of the field and thence into the trunk pipe lines or to the refineries near the field, or to truck, rail, or water carriers (R. 79, 80).

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[22] In September 1934, 38,080 barrels of crude were shipped by rail, 12,710,753 by pipe line, and 2,157,261 barrels were refined in the East Texas field (Railroad Commission of Texas, Oil and Gas Division, Monthly Production and Storage Report for East Texas Field (September 1934), p. 9 (Appendix B, p. 181).

Intermingling of petroleum products in inter- and intra-state commerce.—A similar commingling of interstate and intrastate commerce in petroleum occurs after the crude oil has been processed at the refineries into its various byproducts. These, of which gasoline is the most important, are transported by pipe line, railroads, tankers, and trucks to jobbers, distributors, and retailers located in every city and village and on every highway in the country. As a practical matter, it is nearly impossible to separate strictly interstate transactions from those intrastate in nature, "because the whole is so interrelated that it can truthfully be said that the petroleum business is a national one whose bounds go beyond state lines" (R. 84, 79, 80).

Interstate competition in petroleum products.—Just as crude oil from nearly every producing state competes with crude produced in the other states (*supra*, pp. 50–51) so is there wide-spread competition between the many refinery areas [23] in the country in the sale and distribution of petroleum products. (See Federal Trade Commission, Report on Petroleum Industry, etc., *supra*, at pp. 206–211.) Gasoline sold in Ohio may come from the flush fields of East Texas through pipe line and boat; from the Mid-Continent fields of Oklahoma and Kansas or from Michigan by pipe line or railroad; from the "stripper" well areas of Pennsylvania, Ohio, Kentucky, or Tennessee by railroad or truck. The Chicago market likewise may be serviced from the distant and widely separated areas of the older producing states and the new Mid-Continent and Texas fields. On the East Coast gasoline produced in the East may compete with gasoline from the Mid-Continent and the Gulf Coast and with gasoline brought by tankers from California. Likewise fuel oil, lubricants, and distillates leave the refineries in search of nation-wide markets in competition with commodities from competing refineries and areas in the United States and abroad.

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[23] See map from Report on Pipe Lines, *supra*, Appendix B, p. 45, showing location of the refineries.

Corporate integration of the industry.—The national unity of the industry is greatly increased by the form of its corporate organization. The structure of the industry has changed since this Court compelled the dissolution of the Standard Oil Monopoly in *Standard Oil Co.* v. *United States,* 221 U. S. 1. Instead of one monopolistic company there are now many competing integrated units, each of which produces, refines, transports and markets its products in a great many States (R. 83, 115; Report on Pipe Lines, *supra,* at p. xxiii *et seq.*). About twenty integrated companies, whose activities encompass the entire industry, produce approximately 50 percent of all crude oil produced, control 63 percent of the refining capacity and 90 percent of the pipe-line systems, and own, lease, or control the greater part of the market outlets[24] (R. 83, 115). The oil produced by an integrated company is transported over the company's own pipe lines to its own refineries, sometimes located in another state, where it is placed in temporary storage until refined (R. 115). After refining it is moved to the distributing stations of the company and sold either to wholesalers or to the ultimate consumer (R. 115). From the moment the oil reaches the surface of the well until it arrives at the company's bulk plants or places of ultimate consumption, it is in a continuous current of interstate commerce, about 80 percent of all oil produced being sold ultimately in states other than that in which it is produced (R. 115).

There is the fiercest sort of competition throughout the industry, particularly in the retail trade (R. 83). Competing with the major integrated companies are a number of minor integrated companies and many semi-integrated companies engaged only in production and refining, or refining and marketing, and a host of completely independent non-integrated producers, refiners, and marketers. (See Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 51.)

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[24] "In 1924 the gasoline production of 46 integrated companies reporting to the commission was 172,201,000 barrels, or 80.7 percent of the United States total; in 1925 they produced 200,780,000 barrels, or 77.3 percent of the total; and during the first half of 1926 their production was 108,413,000 barrels, or 75.9 percent of the total." Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 51.

The integrated companies, in addition to producing their own oil, purchase the crude produced by many individuals and nonintegrated producing companies who usually have no storage or pipe-line facilities of their own (R. 116; Federal Trade Commission, Report on the Petroleum Industry, etc., *supra,* at pp. 101–107). Unless restricted in their production the integrated companies can produce all of their crude requirements from their own wells, thus destroying the market of many small independent producers (R. 81). Moreover, the large integrated companies are better able to weather price fluctuations than the small producers, refiners, or marketers (R. 85). Conditions in the East Texas oil field have shown that uncontrolled production leads to monopoly and hardship to small producers (R. 81, 85).

Sensitivity of market structure.—Crude petroleum and its chief derivative, gasoline, have an extremely sensitive market structure, because of the facility with which crude oil moves through the highly developed agencies of transportation and the speed with which it may be converted into its products and delivered to the ultimate consumer. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution in the Oil Industry), p. 604, Appendix B, p. 52; National Petroleum News, June 1, 1932 (Holliday, Narrower Margins Essential), p. 25, 26, Appendix B, pp. 56–58.) The operations of the integrated companies extending over many States intensifies the sensitivity of the market structure. Activity in any branch of the industry or in any section of the country directly affects the economic condition of the integrated companies operating in the same trade area, and is quickly reflected by reason of the closely integrated nature of their operations[25] in all other branches of the industry and all other sections of the country in which they operate (R. 80). Because of the interrelationship of the different branches of the industry, fluctuations in the price structure of gasoline in any retail market of the country quickly work through the refinery market to the price of crude oil, and back on the price structure of the entire nation. (See Swensrud, *supra,* and Holliday, *supra,* Appendix B, pp. 49–59.) Production of petroleum in any area in excess of what that area's normal outlets can absorb quickly breaks the price structure of crude, and that of the refinery markets of the entire nation, and produces chaotic conditions in retailing (Holliday, *supra,* Appendix B, pp. 56–58).

The stabilization of this extremely sensitive interstate market in petroleum and its products and, through such stabilization, the accomplishment with respect to this industry of the objectives of the Recovery Act, was the end sought by the production-control provisions of the Petroleum Code. Based upon the conclusion that the conditions under which oil has been produced exert a direct and substantial effect upon this interstate market, the Petroleum Code seeks to regulate these conditions through restricting the production of crude oil to the amount required to meet the national consumptive demand for petroleum products. That the control of production provided for in the Petroleum Code is essential for the protection of the interstate market of the oil industry will appear from a consideration of the conditions governing the production of oil and the course of the industry in recent years.

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[25] "Today we find the marketing of oil, with its preparatory steps of transportation and refining, to be a closely integrated enterprise, handling tremendous volumes of products, through diverging and ramifying channels of distribution of a unique and singularly efficient character." Pogue, Economics of Petroleum, p. 212.

B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products

A combination of singular geologic, legal, and economic factors operate in the production of crude oil in this country. Because of the national scope of the business, these factors have been reflected throughout the United States.

Geologic factors.[26]—This Court has taken notice of the geology of oil pools in *Bandini Co.* v. *Su-*

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[26] See Report on Pipe Lines, *supra*, at p. ix, Appendix B, pp. 20–21; Federal Oil Conservation Board, Report III (1929), p 21, Appendix B, pp. 92–95; Miller, Function of Natural Gas in the Production of Oil (Cooperative report by the Bureau of Mines and American Petroleum Institute),

perior Court, 284 U. S. 8, 16, and in *Champlin Refining Company* v. *Corporation Commission,* 286 U. S. 210, 228. Crude oil is produced by piercing the cap rock of the domelike structure under which petroleum is found confined under high pressure (R. 79). It is usually associated with natural gas and water which act as propulsive agents in causing both a horizontal and vertical movement of oil through the porous-rock structure and up to the surface through whatever wells release the native pressure of the reservoir. Oil is fugitive in nature, and may be brought to the surface through wells drilled in various parts of the pool, with the result that one well drains from all parts of the reservoir (R. 79). Excessive and uncontrolled production causes premature exhaustion of the native pressure of the reservoir and diminishes the amount of oil ultimately recoverable. See *infra,* pp. 91, 136–137.

The migratory nature of oil whereby oil under the land of one operator may be brought to the surface through a well drilled on the land of another, differentiates competition in the production of petroleum from virtually all other mining operations (R. 79). In other extractive industries, one operator may compete for and capture another's market, but he does not thereby capture more of

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p. 120; American Association of Petroleum Geologists, Structure of Typical American Oil Fields (Symposium 1929); Petroleum Development and Technology, 1934, American Institute of Mining and Metallurgical Engineers (Umpleby, Efficient Utilization of Reservoir Energy), p. 168.

the mineral itself nor diminish the ultimate recovery of that mineral. Wherever conservation laws have not existed, or have not been enforced, the fugitive nature of oil has led to a wild race between the many separate property owners in a field to capture as much oil as possible from their own and adjacent properties (R. 80, 93, 95).

Legal factors—the law of capture and the leasing system.[27]—The so-called "law of capture" and the leasing system under which oil is almost universally developed have combined to compel wasteful competitive production, regardless of the needs of the market. By virtue of the "law of capture" competitive drainage by a neighboring operator taking from a common source of underground supply can "nowhere be enjoined or checked by the recovery of damages, however clear the damage. Pleas for judicial protection against the efforts of neighboring producers to exhaust the common reservoir have been met with the admonition of 'Go thou and do likewise'." (Marshall and Meyers, *supra,* at pp. 42–43; see *Barnard* v. *Monongahela Natural Gas Co.,* 216 Pa. 362, 365.) An equally specialized property law governing oil and gas leases has intensified the excesses of this competition. Because of the speculative nature of the enterprise, the production of oil is ordinarily carried on under leases whereby a landowner grants an oil operator the right to drill for oil on his land in consideration of the operator's covenant to pay the lessor a royalty if, as, and when oil is produced. The lessor's desire to realize on his bargain has led him to exact covenants compelling immediate and rapid drilling and diligent and continuous operation after discovery, and where such covenants have been omitted the courts have been quick to imply them. (Marshall and Meyers, *supra,* at pp. 43–44; see Summers, Oil and Gas, pp. 385–423.) While the more recent leases frequently contain provisions which permit the operator to delay the drilling of a discovery well upon the payment of "delay rental", the lessee under such a lease has not escaped the duty, both expressed and implied, of protecting the lease against drainage by drilling and producing offset wells the moment any nearby operator makes a discovery in any part of the structure under lease (Marshall and Meyers, *supra,* at pp. 47–48; Summers, *supra,* at p. 417.)

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[27] For a discussion of the law of capture and the leasing system, see Marshall and Meyers, Legal Planning of Petroleum Production, 41 Yale Law Journal, pp. 33, 40–48.

Competitive drilling and production.—The location of wells has necessarily been determined by the property lines of the surface, regardless of subsurface contours or of the demands of the market (Marshall and Meyers, *supra,* at p. 36). The bringing in of a discovery well in any new field has invariably precipitated an intensive drilling campaign throughout the field. Wells are located on small tracts and as close to property lines as possible for "the recognized purpose of draining as much oil as possible from neighboring lands" (*Ibid;* Report on Pipe Lines, *supra,* at p. xii, Appendix B, pp. 26–27). Neighboring operators "are forced to counter with an off-set well on their side of the boundary line" (Marshall and Meyers, *supra,* at p. 36). From then on off-set follows off-set until the outermost limits of the field have been drilled (Report on Pipe Lines, *supra,* at p. xii). In the East Texas field alone, from whence this case arises, the prod of this kind of competition has resulted in 12,000 new wells in the short space of three years and in the teeth of a constantly rising surplusage of oil. See Oil Weekly, Feb. 26, 1934 (Reistle, East Texas Production) p. 14.[28] A twenty-acre spacing program was attempted, but small tracts and the necessities of off-setting led to over 5,000 exceptions, and today the field average is one well to each nine and one-half acres. (*Ibid.,* at p. 18.) Even a single recalcitrant operator has it in his power to set the pace of competition in spacing, drilling, and production in an entire field. In no other industry does property law thus conspire to force competition regardless of the market outlet for the product and of the total ultimate recovery from the sources of supply.

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[28] The growth of the East Texas field is described in this article as follows (p. 14):

> The East Texas field, the largest developed oil field in the world, is located in Smith, Rusk, Gregg, Upshur, and Cherokee Counties, Tex. The discovery well, drilled by C. M. Joiner, was completed on September 8, 1930, and is located approximately 7 miles north of the city of Henderson and near the eastern limit of the field. Within less than 1 year the new field became the predominant factor in the petroleum industry. On August 16, 11 months after the completion of the discovery well, there were 1,644 wells producing 584,475 barrels of oil per day. At this time, August 16, 1931, the field was placed under military control and production completely stopped until September 6, 1931. January 29, 1934, there were 12,170 producing wells in the field and approximately 70 new wells are being completed each week. Present average well spacing is approximately one well to 9.5 acres. Of the 12,179 wells, 1,702 are classified as marginal wells and allowed to produce 20 barrels per day, the remaining 10,468 wells are allowed to produce 5 percent of their 1-hour potential. The total allowable production for the field, January 29, was 399,095 barrels.

Economic factors—cost advantage of flush fields.—In the new fields of production the natural pressure of the reservoir is often sufficiently great to bring the oil to the surface without human intervention, but in some new fields, and in all fields after the natural pressure has been depleted, it is necessary to use pumps to lift the oil (R. 79, 90, 100–101). These pumping or "stripper" wells produce often as little as one-half barrel of oil a day. (R. 92; Bureau of Mines, Mineral Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49). The wells in the flush fields, because they do not require pumping, enjoy a temporary but tremendous cost advantage as against the fields of settled production in which the "stripper" wells are located.[29] (23 American Economic Review,

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[29] Costs ranged from as low as 17.8 cents a barrel in the Kettleman Hills Field to $2.13 for West Virginia in 1932 (Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, *infra,* Appendix B, pp. 68–91). In

Supp. March 1933 (Stocking, Stabilization of the Oil Industry) p. 55; U. S. Tariff Commission Report to the House of Representatives on Crude Petroleum and its Liquid Refined Products (Report No. 30, 2d Series) pp. 157–163, Appendix B, pp. 60–65; Department of the Interior, Petroleum Administrative Board, Preliminary Report on a Survey of Crude Petroleum, Cost of Production for the Years 1931–1933, pp. 5, 10–33, Appendix B, pp. 67–91.) Unlike most other industries, in which lower costs result from increased efficiency, low cost oil springs from the chance discovery of new flush fields, where the wasteful use of the natural propulsive forces of the reservoir lifts the oil to the surface at a temporarily negligible cost (Oil and Gas Journal, Sept. 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum), pp. 12–13). This economic cost advantage, operative only during the flush period of the well, has intensified the urge of operators, already driven on by the geologic and legal factors previously described, to drain as much oil as possible from the underground reservoir.

Economic factors—large production of first wells drilled.—The competitive race to drill and produce is spurred on further by the abnormally large production gained by the first wells drilled. The high initial reservoir energy, which is responsible for

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1930, individual field variations ranged from 6 cents to $4.84 (U. S. Tariff Commission, Report on Crude Petroleum, etc., *infra*, at pp. 157–163, Appendix B, pp. 60–65).

the large production of the early wells, is rapidly dissipated by these wells, causing a permanent diminution of pressure in the entire field, so as not only to decrease the ultimate recovery of other and later wells, but to increase the cost of securing that recovery. (Report on Pipe Lines, *supra,* at pp. x-xii, Appendix B, pp. 22–27; National Petroleum News, Oct. 2, 1929 (Uren, Influence of Delayed Development on Ultimate Recovery), p. 65.[30]) Therefore all operators rush to early and large production.

Effect of geologic, legal, and economic factors—excessive production and depressed prices.—The peculiar conditions governing the production of oil,

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[30] In this article it is stated (p. 65):

> Maximum ultimate recovery of petroleum from an oil field by ordinary methods of flowing and pumping is secured only by systematic and timely drilling of wells, thus deriving the greatest benefit from the relatively high initial gas pressure. The time at which a well is drilled, in terms of surrounding development, determines to an important degree the amount of oil that it will ultimately produce.
>
> Delay of only a few months in offsetting a neighboring well may mean that 50 percent or more of the potential production of the later-drilled well will be left in the sand, unrecoverable by ordinary methods. Probably no single factor is of greater importance in determining the efficiency of recovery by ordinary well-production methods.
>
> Maximum recovery of oil from a "pool" requires prompt and complete development of the entire oil-bearing area once the discovery well has entered upon its productive life; and in areas where there has been considerable delay in bringing the land to complete development we may expect to find a high percentage of residual oil. The operator who fails to maintain the pace set by his neighbors, or who is unable to finance the rapid development of his property, not only loses some of his oil to his more active neighbors but also leaves in the sand oil which neither he nor

which have been described, have resulted in the excessive production of every newly discovered field (R. 88, 93, 95, 105) and have brought about extreme declines in the price of crude oil (R. 88, 105). The cost advantage accruing to operators in flush fields as against those in "stripper" well areas has enabled the former to continue to operate at a profit though the price be driven to extremely low levels. The law of supply and demand has in this industry utterly failed to exert a corrective influence upon production (R. 76; Oil and Gas Journal, March 26, 1931 (Holliday, Oil's Legal and Economic Handicaps) p. 34; Oil and Gas Journal, Sept. 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum) pp. 12–13; Oil Weekly, Feb. 26, 1934 (Pogue, Balancing Supply and Demand in the Petroleum Industry) p. 43). On the contrary, decline in price has accelerated production with consequent further and further price declines. The major investment in the production of oil occurs in the drilling of the well, and thereafter the cost of production in flush fields remains substantially constant regardless of how much oil is produced.[31]

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his neighbors may secure; oil that is left in the sands gas-drained and without motivating force to bring it into the wells. The oil producer who merely protects his boundaries by offsetting neighboring line wells, leaving his interior locations to be leisurely drilled in later years, likewise suffers a loss of a large part of the potential production that his wells might have secured had the entire property been fully developed at an earlier date.

[31] Actual operating costs apart from drilling and prospecting expenses and general overhead were only 20.7 cents per

Price declines have therefore impelled operators in the flush fields to produce even more oil in order to maintain their income (23 American Economic Review, Supp., March 1933 (Stocking, Stabilization of the Oil Industry) pp. 55, 56–57 [82]). The pres-

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barrel out of a total average cost per barrel for the country of 80.6 cents from 1931 to 1933 (Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, *supra*, at p. 6). From 1927 to 1930 the average operating cost was 25 cents out of a total cost of $1.07. (Tariff Commission Report on Crude Petroleum, etc., *supra*, at p. 155.)

[82] In this article it is stated (pp. 56–57):

> A second economic characteristic of oil production is that capacity once called into being is driven into complete utilization by the irresistible forces of competition. This is the result of two factors: The fixed character of the investment in oil production, and the migratory nature of the mineral product. Oil production is an industry of relatively large fixed costs. The major investment is made in the process of drilling a well. It is an investment of a highly specialized sort. Once made, it can neither be withdrawn nor utilized for other than the purposes for which originally designed. This economic fact, coupled with the physical and geological character of an oil deposit—the disposition of oil to move through the pores of the underground rock once the equilibrium of the pool has been disturbed by the puncturing drill, and to move without regard to property lines on the surface—necessitates under a competitive regime production at maximum well capacity. As long as a well will flow under its natural pressure, it must be permitted to produce regardless of the price of oil. Any return on the original investment is better than none. Since oil is migratory, should an individual operator choose to curtail or cease production awaiting a better price for the product, it is for the benefit of a competitor on an adjoining tract who will reduce the fugacious mineral to possession. Even in the case of pumping wells, once the pumping facilities have been installed, it pays to operate them at maximum capacity as long as interest on purely liquid capital,

sure of all of these conditions has inevitably forced the price of crude oil to lower and lower levels.

Inelastic demand for petroleum.—These price declines have been aggravated by the relatively inelastic demand for crude oil. Demand for crude oil and its products is an indirect one depending upon the desire to use the machinery and the vehicles in which petroleum products are consumed. (Federal Trade Commission, Report on the Petroleum Industry, etc., *supra*, at p. 147.[83]) The de-

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which represents but a small part of total investment, can be secured.

In the light of its economic and geological characteristics, then, the oil industry promises to be recurringly plagued with overproduction. Paradoxically, oil may continue to be produced when it does not pay to produce it. The neat principles of theory are borne out by the stubborn facts of history. Despite continuous overproduction during the past decade, the speculative drive has persistently forced new capacity into existence; this has inevitably been translated into increasing annual output in the face of mounting stocks and a sharp downward trend in prices.

[83] In the report it is stated (p. 147):

> SECTION 5. *Consumption of gasoline—General nature of the demand for gasoline.*—Gasoline has quite a rigidly fixed minimum demand in the field of its chief use as a motor fuel so that the price may increase considerably without any proportionate reduction in consumption, or price may be reduced without a proportionate increase in consumption. This is true for several reasons: (1) because gasoline has become a necessity to the millions of owners and operators of passenger cars, motor trucks, motor busses, motor boats, tractors, stationary and portable engines, and other internal-combustion engines; (2) because the chief demand for gasoline, that of a motor fuel, is dependent upon the demand for automobiles and other motor vehicles; (3) because the cost of gasoline is a small part of the total cost of operating an auto-

mand depends not on salesmanship nor to any great extent upon price, but rather upon other economic variables, such as general prosperity and the number of automobiles in use (R. 76). So inelastic is this demand that the Federal Oil Conservation Board and the United States Bureau of Mines have been able, through the drastic fluctuations in the price of oil and gasoline during the past five years, to forecast within a small margin of error the national demand for crude oil by translating the forecasted demand for gasoline into its crude-oil equivalent every six months.[34]

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mobile or other motor vehicle; and (4) because there is no commercially available substitute for gasoline at as low a price as has prevailed for gasoline. In addition to the uses enumerated above, gasoline, or naphtha, is used quite extensively (1) in the manufacture of varnishes, (2) as a solvent for rubber and other manufactures, and (3) in the dry-cleaning business. By far the largest factor in the rapid increase in the domestic consumption of gasoline has been the increased use of motor vehicles.

[34] See Federal Oil Conservation Board, Surveys of National Petroleum Requirements; affidavit of E. B. Swanson, Director of Petroleum Economics Division, U. S. Bureau of Mines, and member of the Petroleum Administrative Board, explaining the method of determining the national demand, Appendix B, pp. 184–201. (This affidavit was introduced in evidence by respondents at the trial before the District Court of the *Amazon* case (No. 260) but was not included in the record on appeal to the Circuit Court of Appeals. Counsel for petitioners in No. 260 have stipulated with the respondents that this affidavit may be presented for consideration by this Court.)

In Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), the accuracy of forecasts made from 1930 to 1933 is described as follows (p. 261):

Parallel declines in price of gasoline.—The overproduction of crude oil with the consequent declines in its price has necessarily resulted in parallel declines in the price of gasoline, its chief derivative, both because of the cheapness of the raw material and the excessive amount of gasoline refined from it and placed upon the market. (See Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution

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Since 1930 the Federal Oil Conservation Board has published six periodic surveys by volunteer economic committees which aimed at forecasts of demand, recommendation of refinery runs, and estimates of crude oil production. In only the last two (one now current, and its predecessor) has a rate of production been recommended, as distinguished from a prediction. The forecasts of demand, equated back to total crude consumption, have never been less than 95½ percent accurate; one was 99.25 percent correct, and the latest (save the current one), the most difficult because it recommended crude oil production rather than predicted it, was 97.5 percent accurate. All of these forecasts start with an estimate of gasoline demand and work back to crude oil production; demand for other products will be satisfied automatically by refining enough crude to yield the required gasoline. These forecasts have been made in the face of many uncertain factors. This two and a half year period has been one of depression, of diminishing use, and of wide fluctuations of imports. The wholesale gasoline price has varied between a minimum of less than 2.5 cents and a maximum of over twice that; and crude prices have ranged between a " low " of 10 cents and less, and a " high " 10 times as great. Six months or nine months have been covered by each survey. No State has been obliged to accept or follow the published figures. Under these conditions the accuracy of the work gives some indication of what can be done in forecasting the demand side of the equation, without requiring a fixed price as a basis for the determination.

in the Oil Industry), p. 610, Appendix B, pp. 52–53.) Such a decline has occurred in both the wholesale and retail gasoline markets (*Ibid*). The wholesale or refinery prices of gasoline are, of course, the prices at which gasoline is sold in the interstate market.

Excessive production and price trends prior to 1926.—The effect of the competitive conditions attending the production of crude oil upon the interstate market price of crude and its products has attained its fullest intensity within comparatively recent years. Even from the earliest days of the history of the industry, however, these competitive conditions had time and again exerted a demoralizing effect upon the price structure of this industry throughout the nation. The opening up of new large fields of production has almost invariably been characterized by declines in the price of crude oil within a very short time (R. 88, 105). The Spindletop Field in Texas in 1902, the Glen Pool in Oklahoma in 1906, the Lakeview gusher field in California in 1910 (R. 105), and to a more considerable extent the Cushing Field in Oklahoma in 1913 were followed by severe price reductions. Production in the Cushing Field in 1914 caused a market "decline which affected every type of high-grade oil produced in the United States and caused a decided curtailment of activity in practically every [other] oil field in the country" (United States Geological Survey, Mineral Resources of the United States, Part II, Petroleum in 1915, p. 659; Pogue, Economics of Petroleum, p. 239). This field, however, was rapidly depleted[35] (Pogue, Economics of Petroleum, p. 239) and a steady rise in the price of oil followed until in March, 1920 Mid-Continent crude was selling as high as $3.50 per barrel.[36] (Federal Trade Commission, Report on Petroleum Industry, etc., *supra*, at p. 129.) This rise in price was accentuated by the absence of new discoveries of extensive oil fields with the resultant fear of shortage of supply which became so pronounced during the War that people were requested not to use their automobiles on "gasless Sundays" in order to preserve the supply for military purposes (*Id.*, at p. 148). In 1920–1921 new fields were discovered in Santa Fe Springs, Huntington Beach, and Long Beach, California, in Burbank, Oklahoma, and in Mexia, Texas, and production in these fields, together with the industrial depression then existing, soon brought about a severe decline in the price of crude oil (*Id.*, at p. 130; Oil and Gas Journal, August 23, 1934 (Oil Discovered 1920–1934), p. 237).

Fear of scarcity and increased demand for petroleum prior to 1926.—Various factors existing prior to 1926, however, prevented the competitive conditions attending these early fields from causing the complete demoralization of the interstate market. Prior to that year the national market for crude petroleum was dominated by fear of immediate scarcity. (See Federal Oil Conservation Board, Report I (1926), pp. 8, 13; World Petroleum, May 1930 (Thomas, The Law of Diminishing Returns), p. 171.) This fear had been stimulated by the rising demand for petroleum brought on primarily by the increase in the use of automobiles. (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 148.) The rising demand for petroleum and the fact that the earlier fields were wastefully produced caused the flush production of these fields and their effect upon the interstate market to be very short lived.

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[35] Cushing production fell from 49,000,000 barrels in 1915 to 21,000,000 in 1918 and to 8,000,000 in 1925. (United States Geological Survey, Mineral Resources of the United States, Part II, Petroleum in 1915, p. 665; *id.*, Petroleum in 1918, p. 1070; Bureau of Mines, Mineral Resources of the United States, 1926, Part II, p. 357.)

[36] Pennsylvania crude was selling as high as $6.10 per barrel. (Federal Trade Commission, Report on Petroleum Industry, etc., *supra*, at p. 129.)

New flush fields and excess capacity after 1926.—After 1926, however, fear of immediate scarcity was replaced by knowledge of enormous excess capacity. Spurred on by fear of scarcity and high prices, the geologists and engineers of the industry had been perfecting geophysical methods of finding new fields and engineering techniques for digging to deeper and deeper pools. (Federal Oil Conservation Board, Report IV (1930), pp. 6–7; see Oil and Gas Journal, August 23, 1934 (Engineering Era in Oil Production Practice Brought Many Improvements), p. 233.) Beginning in 1926 the improved technology of finding and drilling up oil fields culminated in the discovery and rapid development in quick succession of a series of prolific new pools (Federal Oil Conservation Board, Report IV (1930), pp. 6–7), the most important of which were the Seminole field in Oklahoma and the Crane-Upton and Yates pools in Texas, discovered in 1926, and the great pools of Oklahoma City (1928), Kettleman Hills, California (1928), East Texas (1930), and Conroe on the Gulf Coast of Texas (1932) (Oil and Gas Journal, August 23, 1934 (Oil Discovered 1920–1934), p. 237).

Present potential capacity.—The peculiar competitive forces inherent in the production of oil soon caused the development of a daily potential capacity many millions of barrels in excess of current consumption. So great had this potential become that by February 1931 one noted authority estimated the daily capacity to be 14 million barrels (Oil and Gas Journal, February 26, 1931 (Pogue, Economics of the Crude Oil Potential), p. 25). The Corporation Commission of Oklahoma found the potential of the United States to be about 10 million barrels. (See Transcript of Record, pp. 78–79, *Champlin Refining Company* v. *Corporation Commission, supra,* No. 122.) Estimates of the potential of the East Texas field alone have ranged as high as 120 million barrels daily[37] (Hearings, S. 1712, H. R. 5755, Senate Committee on Finance,

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[37] The complaint alleges the potential production capacity of the East Texas field to be 100,000,000 barrels per day (R. 6). The estimate given by a witness for the respondents of 5,000,000 barrels per day (R. 101) would seem to be more reliable.

73d Cong., 1st Sess., p. 168). While potential production figures are subject to many variables, all calculators agree that for several years in the immediate future, if all restraint were removed, production would be many times in excess of what the market could absorb (Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, p. 702, 704; R. 80).

Demoralization of prices after 1926.—The demoralization of the interstate market in petroleum and its products was continuously threatened from 1926 to 1931 by the production from these newly discovered fields. (See Osborn, Oil Economics (1932) p. 30.) In 1931 and again in 1933 the collapse became complete primarily by reason of the production from the East Texas and Oklahoma City pools. The peculiar conditions characterizing the production of oil which compelled the competitive exploitation of the newly discovered fields in the face of an inelastic domestic crude-oil demand of from two to two and one-half million barrels daily (R. 101; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300) [illegible] pletion of the great trunk pipe lines, the establishment of intercoastal tanker routes and the vertical

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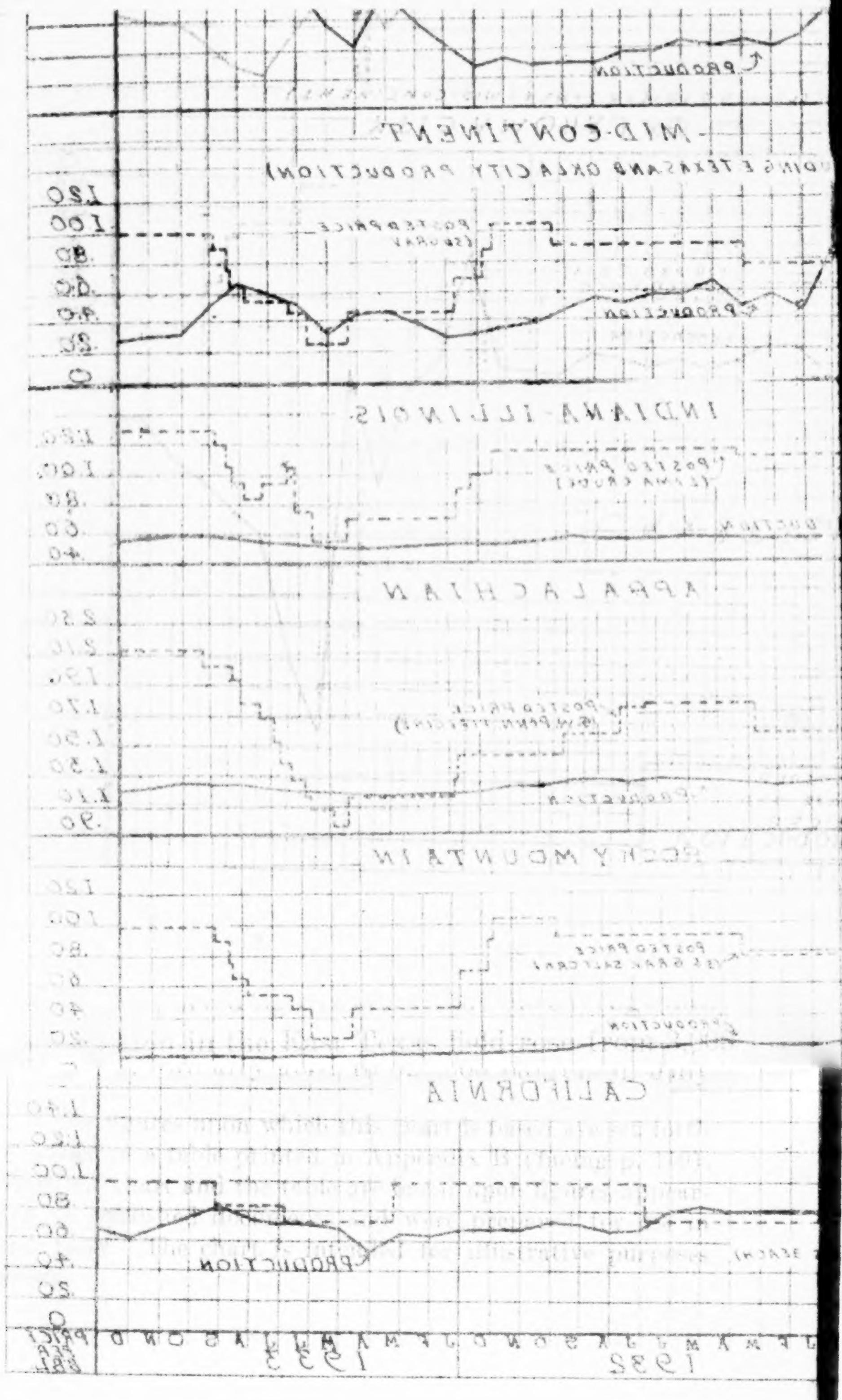
[88] An aggravating factor was the falling off of the domestic and export demand commencing in 1930 (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300).


PRODUCTION
MID-CONTINENT
(INCLUDING E TEXAS AND OKLA CITY PRODUCTION)
POSTED PRICE (36 GRAV)
PRODUCTION
1.20
1.00
.80
.60
.40
.20
0
INDIANA-ILLINOIS
POSTED PRICE (ILLINOIS CRUDE)
PRODUCTION
1.20
1.00
.80
.60
.40
APPALACHIAN
POSTED PRICE (S.W. PENN. PIPE LINES)
PRODUCTION
2.30
2.10
1.90
1.70
1.50
1.30
1.10
.90
ROCKY MOUNTAIN
POSTED PRICE (36 GRAV SALT CREEK)
PRODUCTION
1.20
1.00
.80
.60
.40
.20
0
CALIFORNIA
PRODUCTION
1.40
1.20
1.00
.80
.60
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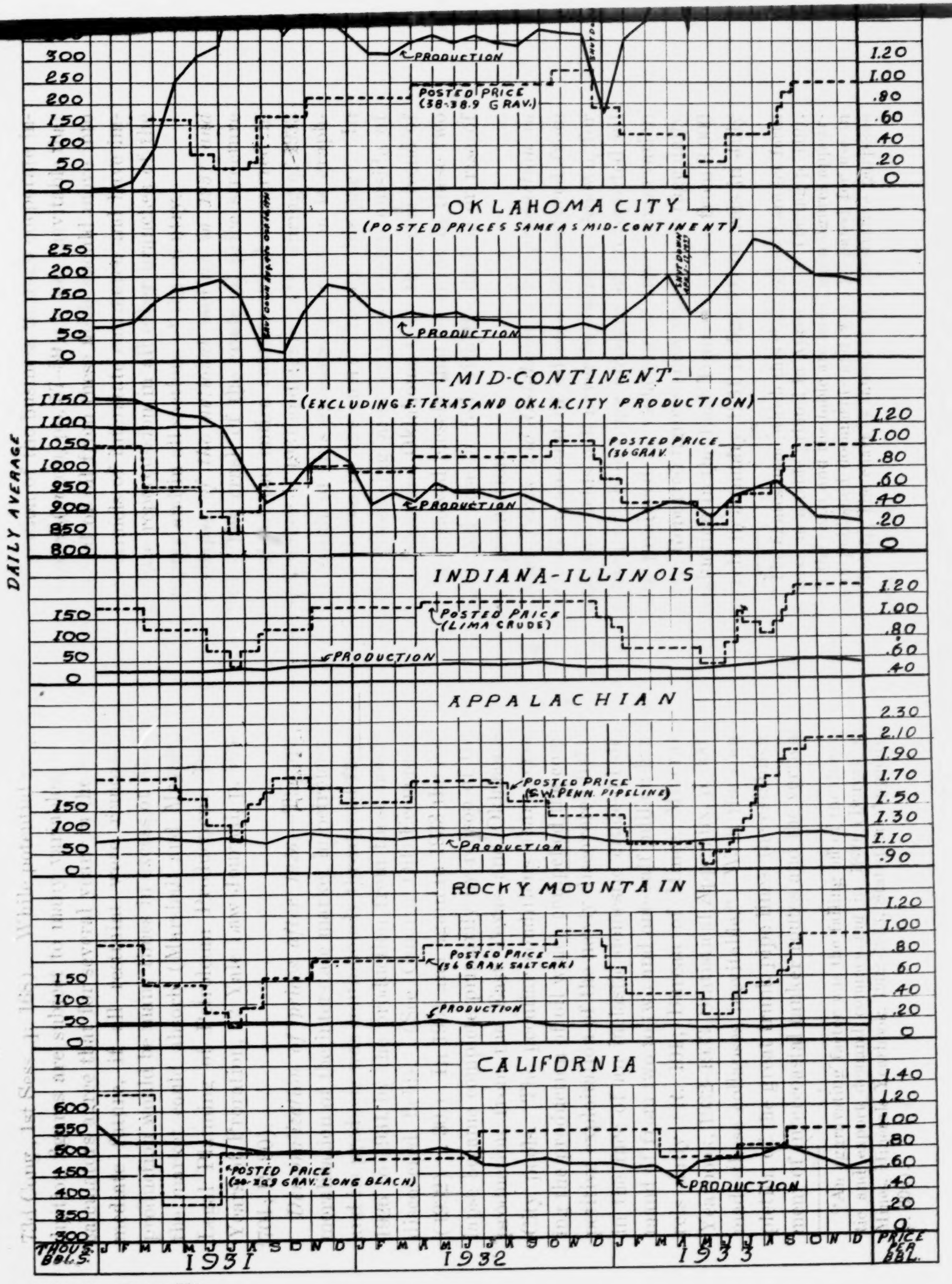
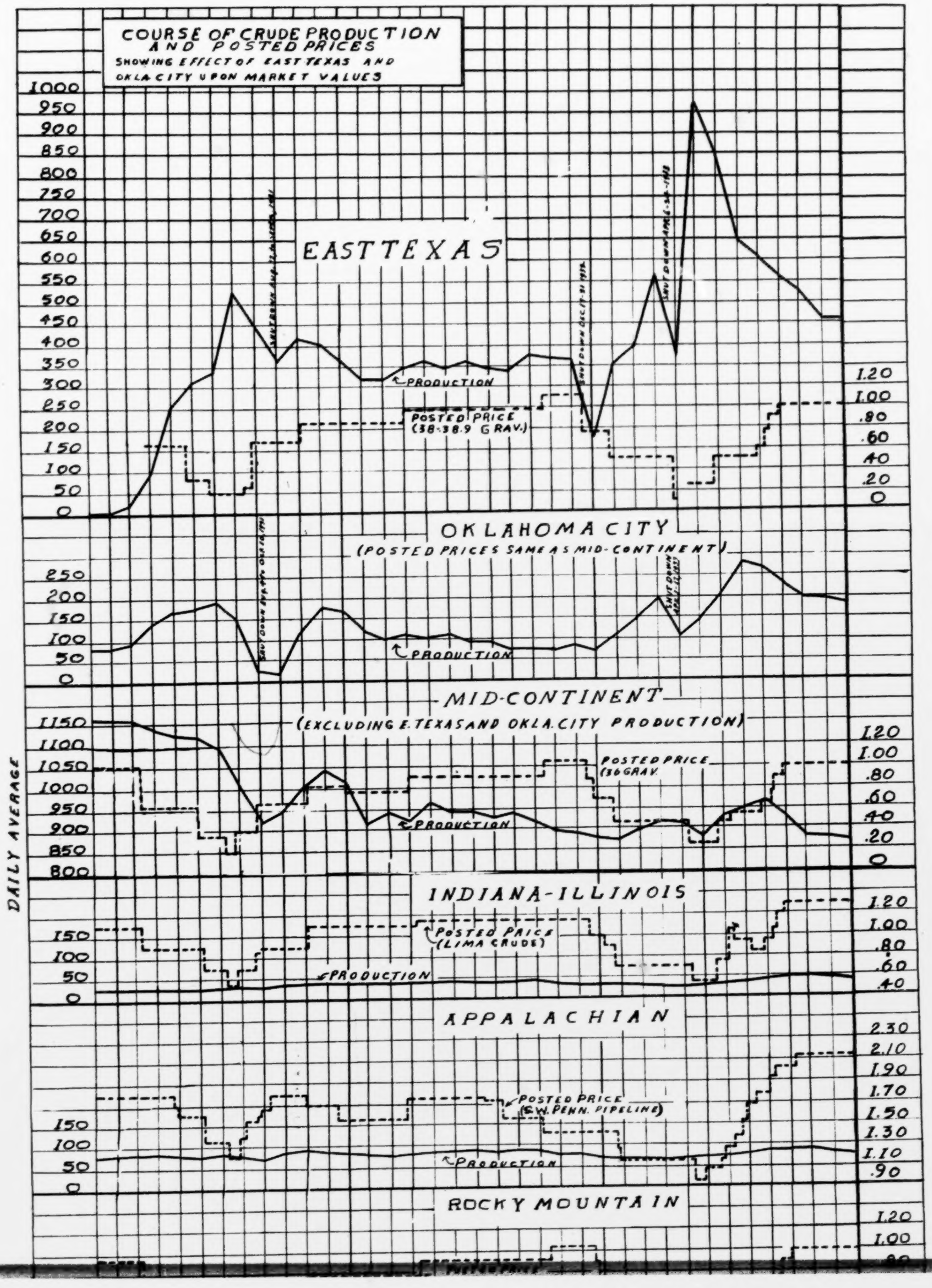
.20
0
PRICE PER BBL
J F M A M J J A S O N D J F M A M J J A S O N D
1932
1933



98810—34. (Face p. 79.)



COURSE OF CRUDE PRODUCTION AND POSTED PRICES
SHOWING EFFECT OF EAST TEXAS AND OKLA.CITY UPON MARKET VALUES

organization of the business through corporate integration (*supra*, pp. 57–59), it was inevitable that the flood of oil from these fields should move into the channels of interstate commerce and have immediate repercussion in all other branches of the industry and in all sections of the country.

Collapse of the national market in 1931 and 1933.—The crash of the crude-oil price structure throughout the entire country which occurred in the summer of 1931 and again in the spring of 1933 as a result of this excessive production is graphically shown by the chart[39] facing this page. In every producing area in the country outside of East Texas and Oklahoma City, the price trend of crude followed closely that of crude in these two fields and rose or fell with the decline or rise of their production.

East Texas and Oklahoma City production in 1931.—The amount of oil actually produced from these two fields will never be definitely known, for in each of them huge amounts of unreported oil were produced in violation of state conservation laws. Reported figures show that the average daily production in the East Texas field rose from 3,000 barrels in January 1931 to 528,000 barrels in July of that year, and that production in the Oklahoma City pool, which in January 1931 averaged 82,000 barrels per day, had mounted to 193,000 barrels per day by the following June (Table, facing p. 110, Appendix B). By reason of production in excess of the orders of the Railroad Commission of Texas, actual production in the East Texas field was far in excess of the reported figures and by the middle of August 1931 is estimated to have reached the staggering total of a million barrels daily.[40]

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[39] The figures upon which this chart is based are set forth in detail in a table printed in Appendix B (facing p. 110). Both the chart and the table are based upon figures appearing in published documents and were prepared for use in this brief. The chart is intended for illustrative purposes solely.

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[40] The Bureau of Mines in its annual report on Crude Petroleum and Petroleum Products in 1931 (published in Mineral Resources of the United States, 1931, Part II) describes the production in the East Texas field during this period as follows (pp. 584–585):

> The discovery well was completed in October 1930, in Rusk County, in what is now called the "Joiner pool"; but the first large well was brought in near Kilgore, also in Rusk County, just before the end of 1930. Any doubt as to the possibilities of the area was dispelled when the field was extended into the Lathrop district, Gregg County, in the latter part of January 1931. A few months later the producing area was extended into Upshur and Smith Counties, virtually proving a total of 100,000 acres for production in four counties. From the standpoint of area the East Texas field far outranks all other known fields of the world. The prevalence of small, irregular leases, easy drilling, and the fact that only a few major companies had protected themselves with large blocks of acreage led to a competitive drilling campaign.
>
> In spite of the number of restrictive orders from the Railroad Commission production increased rapidly and by the middle of August reached 1,000,000 barrels daily. As production mounted prices declined, and considerable oil was sold for as low as 5 cents per barrel. Conditions became so chaotic that on August 17 the governor issued an order shutting down the field and called out the militia to enforce it. The shut-down lasted nearly three weeks, during which

Prices in 1931.—This production broke the price structure of crude oil throughout the entire country. In East Texas the price of crude fell nearly to the vanishing point. The posted price in this field had fallen to 20¢ per barrel by July 1931 (see Table facing p. 110, Appendix B), but large quantities were sold at even lower prices when major purchasers withdrew their postings, and sales as low as 2½¢ per barrel were recorded (Bureau of Mines, Mineral Resources of the United States, Part II, 1931, Crude Petroleum and Petroleum Products, pp. 605–606[41]). The declines elsewhere were almost as severe. 36-degree gravity Mid-Continent which in 1926 had averaged $2.13 (Bureau of Mines, Mineral Resources of the United States, 1926, Part II, p. 386), and in January 1931, was $1.01 per barrel, had fallen to $0.20 a barrel in July

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time surplus stocks were used up and a program was devised under which the field could be operated without demoralizing the entire crude oil market.

[41] This report stated (pp. 605–606):

> The majority of the changes in posted prices in 1931 were induced by developments in the East Texas field. Several lower postings were made in most grades in the Mid-Continent in the first quarter of the year before production in the East Texas field had passed the point at which it could be absorbed comfortably by the market. These undoubtedly anticipated the overproduction period that followed; the lower prices in the second quarter were brought on by the overproduction itself. Undercutting of prices in the East Texas field became so prevalent by midyear that the major purchasers withdrew their postings, and prices were reduced progressively until some producers accepted 2½ cents per barrel to obtain connections. Overproduction in the East Texas field tended to depress prices throughout the country, with the result that many so-called " marginal wells " were closed in.

of that year. See Table facing p. 110, Appendix B. The posted price for crude in the Appalachian District fell from $1.80 per barrel in January to $1.20 in July 1931; in the Indiana-Illinois area from $1.10 to $0.55; in the Rocky Mountain area, from $0.95 to $0.18; in the Gulf Coast area, from $0.69 to $0.31; and in California, from $1.38 to $0.81. (*Ibid.*)

Production and prices in 1932–1933: the collapse in 1933.—Production in the East Texas and Oklahoma City fields became so chaotic in the summer of 1931 that these two fields were completely shut down by the use of military forces. (National Petroleum News, August 12, 1931 (Oil Companies Prepare for Court Battle on Enforced Shutdown) p. 31; National Petroleum News, August 19, 1931 (Smith, Scramble for Crude as East Texas Output is Shut off under Martial Law) p. 19; see Transcript of Record, pp. 90–93, *Sterling* v. *Constantin,* 287 U. S. 378.) The use of troops granted respite for a time and increases in the price of crude were recorded throughout all producing areas (see Chart, *supra,* p. 79, and Table, facing p. 110, Appendix B), but soon the same competitive forces which had brought military forces into use had again disrupted the market, and further shut-downs of the East Texas field became necessary in December 1932 and April 1933, and of the Oklahoma City Pool in March 1933. (Oil and Gas Journal, December 22, 1932 (Bredberg, Shutdown in East Texas is Practically Complete and District Court

Dismisses all Injunctions), p. 33; Oil and Gas Journal, April 13, 1933 (Bredberg, Renewed Hope for Proration in East Texas Area; Field Shut down Awaiting Test of Key Wells) p. 45; Oil and Gas Journal, March 9, 1933 (Spinney, Governor Shuts in Oklahoma City Field, Charging some Companies Greatly Overproducing), p. 42.) These interruptions failed to stem the rising flood of crude oil. Estimated daily production in the East Texas field stood again at over one million barrels. (Oil and Gas Journal, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7; *Id.,* May 4, 1933 (Rowley, Wild Orgy in East Texas Brings Inevitable Cut; Voluntary Curtailment Elsewhere Suggested), p. 7.) In the Oklahoma City pool daily reported production rose steadily to a peak of 278,000 barrels in July 1933. See Table, facing p. 110, Appendix B. The crude oil price structure throughout the country was again broken. The price decline which had commenced in the latter part of 1932 gathered momentum. See Chart, *supra,* p. 79. In April 1933 the posted price for crude in the East Texas field stood at 10¢ a barrel and parallel reductions occurred throughout the country.[42] Mid-Continent *posted* prices dropped to 25 cents a barrel, Gulf Coast to 30 cents, Rocky Mountain to 25 cents, Appalachian to 97 cents, Lima to 55 cents, and California to 75 cents. See Table, facing p. 110, Appendix B. The significance of these figures appears from comparison with production costs in these areas.

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[42] The spread of price reductions throughout the nation during this period is described in Oil Weekly, May 15, 1933 (Price Cuts Extend to Mid-Continent-Eastern Areas), p. 33 (Appendix B, pp. 124–129) and in National Petroleum News, May 10, 1933 (Crude Prices Drop Under Pressure of East Texas Situation), p. 15 (Appendix B, pp. 129–132).

	Posted Prices in May 1933	Costs (first 9 months of 1933)
East Texas	[1] $0.10	[2] $0.496
Mid-Continent	.25	[3] .830
Texas Gulf Coast	.30	[4] .580
Rocky Mountain	.25	[5] 1.163
Appalachian	.97	[6] 1.885
Lima	.55	[7] 1.186
California	.75	[8] .724

[1] Prices posted April 25, 1933. On May 2 postings were discontinued until May 13 when they were raised to 25 cents. The posted prices appear in the Table, facing p. 110, Appendix B.

[2] See Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, etc., *supra*, at p. 17, Appendix B, p. 75.

[3] Oklahoma costs. *Ibid*, p. 21, Appendix B, p. 79.

[4] *Ibid*, p. 17, Appendix B, p. 75.

[5] Salt Creek, Wyoming Costs. *Ibid*, p. 27, Appendix B, p. 85.

[6] Pennsylvania costs. *Ibid*, p. 33, Appendix B, p. 91.

[7] Indiana costs. *Ibid*, p. 31, Appendix B, p. 89.

[8] Signal Hill costs (chosen because Signal Hill prices are used as representative). *Ibid*, p. 10, Appendix B, p. 68.

In every region except California costs were far above the prices of the oil.

Collapse of gasoline prices.—The collapse in the market structure of crude petroleum brought on by this excessive production was necessarily accompanied by a similar collapse in the market structure of the refined products.[43] Cheap crude flooded the market with cheap gasoline. The price trend of wholesale gasoline closely paralleled that of crude oil, reaching as low as 2¼ to 2½¢ per gallon when the crude oil market collapsed in the summer of 1931 and again in the spring of 1933 (Oil and Gas Journal, July 27, 1933 (Table of Prices for Refined Products), p. 38).

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[43] See Oil and Gas Journal, July 27, 1933 (Willson, New Lows in Average Prices for Refined Products Established in the First Six Months of 1933) p. 36, with table showing how prices of refined products rose and fell with the prices of crude oil.

Surplus stocks.—Because of the inelastic nature of the demand for petroleum products (*supra,* p. 71) the price declines did not bring about any material increase in their consumption, and this factor, together with the development of refinery technique[44] which had greatly increased the recovery of gasoline from crude oil, resulted in tremendous surplus stocks of crude and refined products. See Hearings on the Petroleum Code before the National Recovery Administration, Volume 2, pp. 3003–4. At the end of 1932, stocks of crude oil amounted to 339,715,000 barrels and stocks of refined products amounted to 247,188,000 barrels (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300). These surplus stocks are a constant threat to the stability of the market structure.

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[44] The cracking process was described by this Court in *Standard Oil Company* (*Indiana*) v. *United States*, 283 U. S. 163, 167. See also Federal Trade Commission, Report on Petroleum Industry, etc., *supra*, at p. 142; Federal Oil Conservation Board, Report V (1932), pp. 26–27. It is now possible to obtain up to 70 per cent gasoline from crude oil instead of the 20–30 per cent formerly obtainable (Oil and Gas Journal, February 5, 1931 (Egloff, Nelson, and Truesdell, Cracking Steadily Gaining in Importance) p. 24).

Competitive struggle for gallonage.—The accumulation of this large excess supply intensified the competition for the market. Producers were driven to enter the refining and marketing branches of the industry and thousands of new filling stations were built in every section of the country. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution in the Petroleum Industry) pp. 604, 605, 608, Appendix B, pp. 51–52; Bureau of Foreign and Domestic Commerce, Petroleum Industry of the Gulf Southwest (1931), p. 128). Because of the inelastic demand for gasoline, no larger aggregate amount of gasoline was distributed by reason of these additional facilities.[45] It was merely distributed through more retail outlets at an increased cost of distribution to the consumer. This struggle between retail marketers for gallonage has led to vicious competitive excesses throughout the country (R. 85, 86).

"Hot oil" and the interstate market.—The huge amounts of oil produced in violation of state law (R. 97, 102, 109, 120) have exerted a particularly depressing effect upon the interstate market of petroleum and its products (R. 85–86, 97, 102–103, 109–110, 120). Actual reported production in recent years shows a tremendous amount of illegal or

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[45] The demand decreased after 1929 (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300).

"hot" oil; the amount not reported can only be estimated.[46] By March 30, 1933, the output of the East Texas Field was estimated to be a million barrels a day, although the daily allowable was only 400,000 barrels[47] (Oil and Gas Journal, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7). Considerable quantities of "hot" oil were also produced in the Oklahoma City pool.[48]

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[46] "How much more oil was produced in the field no one may ever be able to say, as it is believed millions of barrels were produced, of which there was no record made and most of which sold below market prices" (Oil and Gas Journal, Jan. 26, 1933 (Bredberg, Year of Turmoil in World's Largest Oil Field), p. 102).

[47] The Oil and Gas Journal carried weekly estimates of the illegal production in the East Texas field. On February 20, 1933, it was estimated to amount to 103,000 barrels daily (Oil and Gas Journal, March 2, 1933 (East Texas Crude Production and Shipments), p. 32); on February 27, 1933, the estimate was 90,695 to 150,000 barrels per day (*Id.*, March 9, 1933 (East Texas Crude Production and Shipments), p. 32); on March 25, 1933, the *reported* production was 231,381 barrels per day in excess of the daily allowable (400,000 barrels), and the *actual* daily production was estimated at 378,875 barrels above the allowable (*Id.*, March 30, 1933 (East Texas Crude Production and Shipments), p. 32); and by March 30, 1933, the output of the field was around 1,000,000 barrels a day as against a daily allowable of 400,000 barrels (*Id.*, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7).

[48] At hearings held by a committee of the Oklahoma State Senate in January 1933 investigating the production situation in the Oklahoma City field, the vice president of one company admitted that his company had produced approximately 1,000,000 barrels in excess of its allowable between

Because of its illegal character, this oil was offered at large discounts below the posted price (R. 85, 97, 102–103, 120), and accelerated the decline in the price of crude oil. The refiners who purchased "hot" oil were able to market their petroleum products at a lower price than their competitors dealing in legal oil (R. 85, 97; Petroleum Development and Technology, 1933, American Institute of Mining and Metallurgical Engineers (Struth, Petroleum Economics in 1932), p. 51;[49] Oil and Gas

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October 1931 and November 1932 (Oil and Gas Journal, Feb. 2, 1933 (Evidence of Big Overproduction and of Sales of Overproduced Oil in Oklahoma City), p. 11). The official of another company testified that his company had purchased at least 525,000 barrels of "hot" oil at prices ranging from 24 to 40 percent below the posted price (*Ibid*). At a later date of this hearing, the official of another company admitted that his company had run 1,000,000 barrels of illegally produced oil in 1931 and 1932, and was running 8,000 barrels per day of such oil in January 1933 (Oil and Gas Journal, March 2, 1933 (Easy to Ship Illegal Oil Out of Oklahoma City, Witnesses Say, Who Admit Having Done It), p. 11). The situation was so bad in this field that the Governor of Oklahoma ordered a complete shutdown on March 4, 1933, in order to curb the overproduction (Oil and Gas Journal, March 9, 1933 (Spinney, Governor Shuts in Oklahoma City Field, Charging Some Companies Greatly Overproducing) p. 42).

[49] It is there stated (p. 51):

> East Texas continued to exert a far-reaching influence on the crude and gasoline market during 1932. Despite the fact that oil prices were advanced in most fields, large quantities of oil were produced in East Texas in violation of state proration orders, and sold in the market at prices considerably below official postings. This created competitive conditions in the gasoline market that were felt by all refining centers of the United States. The quantity of gasoline produced from cheap East Texas crude was not large, but

Journal, January 12, 1933 (Willson, Price Reductions in Oklahoma Market Include Kerosene, Distillate, Fuels, and Gasoline), p. 20[50]); and those wholesalers and retailers who acquired "hot" gasoline were similarly able to cut prices below that of their competitors (R. 97), compelling the latter to meet the lower price in order to retain their business (R. 97, 103, 120). Waves of price-cutting of oil and its products extended across entire states and often across state boundaries (R. 85, 97). Legitimate refiners were frequently compelled to sell below cost in order to preserve their market (R. 85, 97). Bootlegging of "hot" oil and "hot" gasoline developed in amazing proportions in the East Texas field (R. 85, 97, 102–103, 120). "Hot" oil and "hot" gasoline lost their identity upon being commingled with legal oil and its products and moved into the channels of interstate commerce (R. 120). Even such "hot" oil or gasoline as might in an individual case move wholly within the State necessarily had a direct effect upon the interstate market because it compelled other producers

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the volume was sufficient to influence prices in practically all sections of the country. Thus, while the industry's economic situation showed visible improvement statistically, the unreported and unseen statistics originating in East Texas proved to be an insurmountable obstacle to the economic betterment that was otherwise apparently justified.

[50] Some underselling was also caused by offering of distress oil by producers who were unable to secure pipe-line connections (Oil and Gas Journal, Jan. 12, 1933 (Willson, Price Reductions in Oklahoma Market Include Kerosene, Distillate, Fuels and Gasoline), p. 20).

to produce "hot" oil and to place it upon the interstate market, in order to prevent drainage of the oil from under their premises (R. 81). In any case it absorbed part of the local market which had ordinarily been supplied by dealers in legitimate oil and its products, impelling them to seek markets in other states (R. 81, 120). Certain of the petitioners in the *Amazon* case were shown to have been producing "hot" oil (R. 128–129), and "hot" oil produced by the Amazon Petroleum Corporation was shown to have been commingled with other oil and moved to the terminal of a refining company from which it moved into interstate commerce (R. 129–130). Another of the petitioners was discovered moving oil from one of its leases to a refining company by a "bypass", a secret device employed to deliver "hot" oil, and part of this oil was refined into products which were shipped in interstate commerce (R. 130).

Importance of "stripper" well areas.—The collapse throughout the country of the price structure of crude oil resulting from the flush production of the new fields drastically affected producers in the "stripper" well areas. Out of the total of 321,000 producing wells in the country (R. 89, 90, 100–101; see Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49), only about 15,000 are flush wells and of these 11,000 are located in the East Texas Field (R. 100). The rest of them are "stripper" wells having an average production of from one to five barrels per day; 250,000 of these produce an average of only one barrel daily. (R. 89; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49.) In Illinois, New York, Ohio, Pennsylvania and West Virginia the daily average produced is less than one barrel per well and the wells of Indiana and Kentucky average less than 1½ barrels per day. (*Ibid.*) Many of the states in which the flush fields are located, including Texas and Oklahoma, also have large "stripper" well areas (R. 106, 107, 95–96, 104). The flush production of the new fields is, moreover, of temporary duration (R. 80), and prior to the approval of the Petroleum Code the excessive production from the East Texas field was diminishing the natural pressure and was bringing nearer the date when this field would also have to go on the pump and become a "stripper" field (Oil and Gas Journal, May 18, 1933 (Bignell, Recent Orgy of Production in East Texas Field Has Definitely Shortened the Flowing Life), p. 10; Oil Weekly, May 15, 1933 (Reservoir Pressure Drops as East Texas Production Spree Continues), p. 7), as have all flush fields in the past. See Report on Pipe Lines, *supra,* page ix, Appendix B, p. 21. The "stripper" fields are the backbone of the national supply, furnishing in normal times somewhat over 25 percent of the total domestic production[51] (R. 107).

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[51] See Hearings, S. 1712, H. R. 5755, Senate Finance Committee, 73rd Cong. 1st Sess. pp. 174, 179, 247, 250, Appendix B, pp. 139–140, 145, 146. See statement of Wirt Franklin at

Effect of price collapses on "stripper" well areas—loss of their national market.—The decline in crude oil prices drove prices in the "stripper" well areas far below the cost of production, causing many of these wells to be abandoned. (R. 81–82, 84, 89, 90–91, 105; *supra,* p. 84; and see Tariff Commission Report on Crude Petroleum, etc., *supra,* at pp. 158–163, Appendix B, pp. 59–65, and Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, etc., *supra,* at pp. 10–33, Appen-

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Hearings on Petroleum Code before National Recovery Administration, as follows (p. 3032):

> The most important oil reserves in the nation are not found in the present flush fields or great pools. Our greatest oil reserves and the most important ones are in the approximately 300,000 stripper wells, with a total production of about 600,000 barrels per day. Several billion barrels of petroleum will ultimately be recovered from these wells. That recovery, however, is dependent upon the possibility of operating these wells at a profit. Since they are all on the pump, their production costs are necessarily higher than is the case with wells of flush production, such as are found in new fields only. Under present conditions, these wells are operated at a loss. Many of them have been shut down. Once closed, few of them ever can be reopened. Their premature abandonment would present a loss to the Nation of many millions of dollars of actual wealth. From some of those wells comes our most important supply of lubricants. They occupy a most important position in the structure of the petroleum industry. They are the very backbone of that industry. Flush fields are uncertain. Wells in such fields may suddenly cease flowing and require pumping. The flush wells of today are the stripper wells of tomorrow. The output of such wells is impossible to estimate. The wells of settled production are the most substantial part of the industry.

dix B, pp. 68–91.) During 1931, approximately 22,000 of such wells were abandoned, many more than in any other previous year. (Bureau of Mines, Mineral Resources of the United States, 1931, Part II, p. 610.) The record is replete with statements by producers from nearly every "stripper" well area in the country, showing the loss of their normal interstate and foreign market resulting from the excessive production in the flush fields and the decline of prices below their lifting costs, and the consequent abandonment of many of their wells. (R. 90–91, 105, 106, 107, 94, 95, 104; see Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73rd Cong. 1st Sess. pp. 174, 177, 178, 215, 242, 243, 244–250, 271, Appendix B, pp. 139–148; Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Cong., 1st Sess., pp. 103–106, 109–111, 113, 117, 118, 119, Appendix B, pp. 155–161.) Production outside of the flush fields of Texas, Oklahoma, and Kansas decreased over 18 million barrels during the first six months of 1933, although the total production in the country increased 39 million barrels. (Oil and Gas Journal, July 27, 1933 (McIntyre, Flush Fields and Illegal Oil Runs Responsible for Increased Crude Production), p. 35, Appendix B, p. 108.) Production from the flush fields threatened to monopolize the market of most of the "stripper" well areas in the country. (R. 90, 96, 105–106, 107; see Federal Oil Conservation Board, Report V (1932), p. 3.)[52]

Permanent loss of resources in stripper-well areas.—The shutting down of many of the "stripper" wells caused the permanent loss of their reserves as a result of water intrusion (R. 89, 90, 101, 102, 105, 107), and in the case of other "stripper" wells, the majority of which are owned by persons of moderate means (R. 90, 106), so increased the cost of restoring them as producers as to make recovery of their reserves economically impracticable.[53] The loss of these reserves not only involved

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[52] In this report it is stated (p. 3):

> Because the potential production, established by competitive drilling, is in excess of the demand for oil, the adjustment among the various sources must either depend on their comparative costs of production, or on enforced restrictions of production to enable allocations of outlet among old and new areas. The new flush fields are the low-cost units, and, therefore, if costs alone were to control, such fields would monopolize the market. Yet unrestricted production from such sources means the temporary or even permanent abandonment of the older wells of settled production, with attendant dislocation of investments. It also means lessened ultimate recovery from the flush fields themselves because of loss of the irreplaceable lifting power of the gas blown into the air, accelerated water encroachment, and other causes.

[53] See Oil and Gas Journal, Feb. 5, 1931 (Hearing before Senate Committee), p. 21 at p. 98:

> These wells are now rapidly being flooded with salt water and the owners of these wells, independent operators, are facing utter ruin. You understand that every well makes a certain amount of salt water. This water is produced right along with the oil. If the wells are completely shut down the salt water accumulates and, being heavier than oil, forces its way

serious economic injury to the owners of the "stripper" wells and to the refineries and pipe-line companies which depend upon these wells for the supply of petroleum normally moved into interstate commerce by such refineries or pipe-line companies (R. 90, 92, 94, 95, 96, 89), not only involved loss of employment and drastic reduction of wages to the thousands of employees dependent for their jobs on the existence of these businesses (R. 89, 90, 92, 96, 103–104, 105, 106, 107), without materially increasing employment in the flush fields (R. 96, 106), but also threatened the vital public interests concerned in the conservation of this important natural resource (*infra*, pp. 138–141).

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back into the oil sand, driving the oil away from the pumps. Today the owners of these wells are pumping them just enough to keep the salt water off, in the hope that some relief may be obtained in the next few weeks that will give them a market again for their products.

Of course you understand the length of time that a producer can pump these wells is gauged by two things: First, his financial ability to continue his operation with no income; and second, the physical limitation. I mean by that that each well makes a varying amount of salt water. The wells making the most salt water would be the first hurt.

It is not necessary for me, I am sure, to point out to this committee that in addition to the owners of these wells there are the royalty owners, the farmers on whose lands these wells have been produced, and they have been depending upon them for a steady income, and the men who have been employed in the producing of these wells, the banks and the merchants of the community that have been built up on this business.

C. The fruitless efforts of the industry and of the States to control the competitive conditions attending the production of oil demonstrate the interstate unity of the oil industry and the need for federal control

The history of the oil industry since 1926 has been characterized by unsuccessful attempts on the part of the industry and the States to regulate the competitive conditions in the production of oil which have compelled production in excess of market demand. The failure of those attempts serves further to demonstrate the essential interstate character of this industry.

Failure of voluntary group action.—Voluntary group action by producers in a few of the fields followed the discovery of the large new pools in 1926 and 1927.[54] Umpires and informal committees were appointed to prorate an estimated market demand among the individual wells and properties within a field. In a few instances, particularly in California, these plans worked. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Allen, Control of California Oil Curtailment), p. 47). But in other cases it proved impossible to obtain compliance with the quotas thus assigned.[55] Practical difficulties have rendered such voluntary proration impossible in most fields. By reason of the geologic and legal factors governing the production of oil, refusal to comply by any one operator within the field would compel all operators to abandon any voluntary plans unless they were willing to permit the oil to be drained from under their premises. See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 17. Other fields, in the same or other states, which refused to prorate, merely absorbed a larger share of the national market upon which all fields were dependent (*Id.*, p. 161). Fear of the antitrust acts, both State and Federal, deterred the industry from making more aggressive attempts to secure stability by agreements within pools and between pools wherever located (*Id.*, p. 17).

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[54] In the Federal Trade Commission Report on the Petroleum Industry, etc., *supra*, at pp. 188–193, the attempts at voluntary proration in the Salt Creek, Panhandle and Seminole fields are discussed. The Yates and Kettleman Hills fields are examples of successful voluntary proration. See Oil and Gas Journal, Oct. 23, 1930 (Hardison, Yates Outstanding Proration Example), p. 64.

Failure of attempts at State regulation.—The efforts of the States were equally futile. Oklahoma acting under an old conservation statute passed in 1915 (Oklahoma Sess. Laws 1915, c. 25) was the first State to supplement the efforts of the industry by force of law and by 1930 the Oklahoma Corporation Commission was prorating the production of the entire State. See Transcript of Record, p. 279–280, *Champlin Refining Co.* v. *Corporation Commis-*

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[55] In the Seminole Field it was found necessary to use the statutory powers of the Corporation Commission. (Federal Trade Commission, Report on the Petroleum Industry, etc., *supra*, at pp. 189–193.)

sion, No. 485, *supra;* Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, 702. Within a short time the Texas Railroad Commission, the official conservation agency of that State, was issuing proration orders on the basis of old waste statutes for many fields (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Donoghue, Proration in Texas), p. 67). The Railroad Commission was soon embroiled in litigation. Its orders were twice invalidated by the courts on the ground that the conservation laws of Texas did not give the Commission authority to limit production to market demand. The conservation law of Texas was finally amended to give such authority to the Commission.[56]

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[56] The series of statutes, proration orders, and decisions in Texas are reviewed in *Amazon Petroleum Corporation* v. *Railroad Commission*, *supra*, p. 6, n. 8. The first of these decisions (*McMillan* v. *Texas Railroad Commission*, 51 F. (2d) 400) precipitated a crisis so acute as to call forth the use of military forces in East Texas and a special session of the Legislature in the summer of 1931, which, although it gave the Commission authority to issue proration orders, specifically withheld power to prorate to market demand. After a temporary interval, the Railroad Commission again took over proration but its orders were again held invalid by a federal three-judge court. (*People's Petroleum Producers* v. *Smith*, 1 F. Supp. 361; see Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, pp. 715–720.) The court there held that the orders of the Commission, while ostensibly predicated upon mere physical waste, were actually in part [illegible] upon a market standard in the face of an ex-

based.

In California a statute was passed seeking to control production by limiting the amount of gas which might be produced per barrel of oil, and the Court unanimously sustained this statute in *Bandini Co.* v. *Superior Court,* 284 U. S. 8. This gas-oil ratio law proved insufficient as a means of preventing excess production and a statute similar to that in Oklahoma was passed by the California Legislature but was defeated by a referendum.[57] (See Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73d Cong., 1st Sess., p. 48, Appendix B, p. 169.)

In *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, this Court sustained proration of production to market demand by a State as against the claim by producers of deprivation of their property in violation of the due process clause of the Fourteenth Amendment, but this decision did not, as many hoped, spell success for proration by the States. The oil-producing States acting individually and driven by self-interest, proved un-

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press statutory prohibition against limiting the production of oil to the market demand. Before the decree could be entered in this case, the Texas Legislature amended the conservation law to authorize proration predicated upon reasonable market demand. (Tex. Stat., Vern. Supp. 1934, Articles 6014, 6014a, 6029, 6049a, c, d.)

[57] See 2 Cal. Gen. Laws (Deering 1931) Sec. 5636, rejected on referendum May 3, 1931. In California the industry attempted state-wide voluntary curtailment under a so-called "Central Proration Committee," upon which all fields in the State were represented.

able to prorate among themselves a national market (*infra,* p. 104). Many of the States had no proration law at all,[58] and even in States which had such laws it proved impossible to obtain compliance when enforcement in other States collapsed and demoralized the market structure (R. 82, 84). Just as within a field, curtailment for some and not for others resulted inevitably in the loss of the fair share of the market for those who did curtail, so as between the oil-producing states curtailment by some and no curtailment or ineffective curtailment by others, resulted inevitably in a loss of the fair share of the national market for those states that did curtail. (See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 13.[59]) And when to an amount of oil

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[58] Only Texas, Oklahoma, and Kansas had proration laws. See Ely, Oil and Gas Conservation Statutes (Federal Oil Conservation Board).

[59] "If it be assumed that production from all the wells in a single pool has been curtailed to equal the demand from that pool, and that all the pools of the State have been likewise regulated, nevertheless these pools are generally tributary to a market supplied also by other pools in nearby States; and all the pools in the curtailing State are at the mercy of any major pool in another. This is true because flush production is cheap and interstate pipe lines are readily interconnected. An uncurtailed flush pool can as readily displace any competing settled pool in the next State as it can its neighbor in the same county, if the old pool does not drop its prices to a level of flush-production costs, and hence to a level below the average costs of the field's life.

"In other words, waste depresses prices; but lower prices, insulated by the capture doctrine, only partially restrain production, for production is controlled by the pace of off-produced without reference to the demands of the national market there was added still more oil produced illegally, and sold, because of its taint of illegality, at only a fraction of the price of legally produced oil, the competitive forces which were generated between and among the states was more than proration could stand.[60]

If the market for oil were a local market, or if the industry were not so physically and economically interrelated on a national scale as to make transfers from different sources of supply such an inevitable occurrence, proration might be able to operate successfully as a local matter. But no more striking proof of the interrelationship of the entire industry can be found than in the statistical records of the past few years which show how markets for both crude and products were almost everywhere governed by the volume of production coming out of East Texas. (*Supra,* pp. 78–85.)

Failure of efforts to coordinate State action.—Although both the industry and the states soon recognized that cooperation between all of the states was necessary if control of the competitive condi-

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set drilling set by the greediest producer; and the destructive process cannot be stopped by any individual operator. The State can relieve this pressure internally, but not that from outside its borders." (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 13.)

See recommendation to the Federal Oil Conservation Board of the Oil States' Advisory Committee, Ely, *supra*, at p. 20, Appendix B, pp. 161–164.

[60] The disregard for Texas and Oklahoma proration laws has been described, *supra*, p. 87.

tions attending the production of oil was to be achieved, it became readily apparent that efforts to obtain such cooperation would prove futile. On April 2, 1929, the American Petroleum Institute[61] submitted to the Federal Oil Conservation Board a world-wide plan for limitation of production to demand and sought the approval of the Board in order to obtain immunity from the federal anti-trust laws.[62] See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 17. On the advice of the Attorney General, the Board held that it had no authority to grant such immunity (*ibid*), but suggested that the industry attempt to secure the cooperation of the states in an interstate compact to be approved by Congress[63] (*id.,* p. 18). The suggestions of the Oil

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[61] In 1926 this association had opposed a plan for Federal control suggested in that year to the Federal Oil Conservation Board. See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 15; Hearings, Federal Oil Conservation Board, May 27, 1926, pp. 2–23.

[62] "It was proposed, by voluntary agreement of the units within the American industry, in cooperation with foreign companies, to restrict the production of the world to the 1928 level, and to allocate that figure among producing nations in the ratio established by their 1928 production; and to carry the purpose further by allocating the American quota among domestic producing regions on the same basis." (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 17.)

[63] A meeting of governors' representatives was held at Colorado Springs in June 1929, at which Secretary of the Interior Wilbur, Chairman of the Federal Oil Conservation

Conservation Board were disregarded until the spring of 1931, when production from the East Texas field had demoralized the national market. In April of that year the governors of the states in the Mid-Continent area appointed the "Oil States' Advisory Committee" in an effort to carry out a common program (*Id.*, pp. 19–20). The Committee recommended allocations to the various states based upon recommendations of committees of economists and engineers appointed by the Federal Oil Conservation Board and by the American Petroleum Institute[64] (*Id.*, pp. 21, 165).

Board, presented a program calling for enactment of uniform conservation legislation for the major oil producing states and the coordination of the efforts of the states by means of a joint commission to be created by an interstate compact ratified by Congress. (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), pp. 18–19.)

[64] These Committees had for some time been engaged in an effort to develop a statistical technique for forecasting the national market demand for crude petroleum (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), pp. 164–165, 261). After careful study, such a technique had been devised and, with certain modifications and improvements which have been made from time to time, it has proved to be sufficiently precise to forecast the consumptive requirements of the market within a small margin of error (*supra*, p. 72; Federal Oil Conservation Board, Surveys of National Petroleum Requirements). The work carried on under the auspices of the Federal Oil Conservation Board has been continued by the Petroleum Economics Division of the United States Bureau of Mines. See Appendix B, pp. 185–186. The facts as developed by this Bureau form the basis upon which the national consumptive demand and the allocation of each state's proportionate

The Oil States' Advisory Committee found it impossible to secure the voluntary cooperation of the states. See Oil and Gas Journal, July 16, 1931 (Score Sheet on Oil Production), p. 28.[65] The suggestion which had been repeatedly made for the coordination of the activities of the states through the medium of an interstate compact was never acted upon by the state legislatures (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), pp. 18, 19, 20, 22–24), even though a bill to authorize such a compact was introduced in Congress[66] (*Id.*, p. 23). Some of the

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part of that demand have been made under those sections of the Petroleum Code here in question. See Appendix B, pp. 186–199.

[65] This article reads (p. 28):

> " Below is shown the allotted average daily production in the United States from April 1 to October 1, 1931, suggested by the Oil States Advisory Committee and the actual daily average production in the week ending July 11:
>
> *Score sheet on oil production for the week ending July 11, 1931*
>
> | | Allotted | Actual | Over | Under |
> |---|---|---|---|---|
> | Texas | 714, 000 | 987, 047 | 273, 040 | -------- |
> | California | 500, 000 | 519, 650 | 19, 650 | -------- |
> | New Mexico | 40, 000 | 42, 113 | 2, 113 | -------- |
> | Oklahoma | 550, 000 | 631, 915 | 81, 915 | -------- |
> | Louisiana | 65, 000 | 56, 115 | ---------- | 8, 885 |
> | Kansas | 110, 000 | 101, 250 | ---------- | 8, 750 |
> | Arkansas | 50, 000 | 43, 475 | ---------- | 6, 525 |
> | Eastern | 110, 000 | 107, 000 | ---------- | 3, 000 |
> | Rocky Mountain fields | 60, 000 | 50, 415 | ---------- | 9, 585 |
> | Total | 2, 199, 000 | 2, 538, 980 | 376, 725 | 36, 745 |
>
> Total net daily average overproduction, 339,980 bbls."

[66] In advocating such a compact, Ely admitted that the states would not adhere if it had any sanction other than

states, driven by the pressure of local interests, had no desire to regard any suggested quota as their reasonable market demand. (See National Petroleum News, March 30, 1932 (Another "Compact" on Oil Talked, But Texas Merely Listens), p. 25.) Following the crash of crude oil prices in the summer of 1931, the Governors of Oklahoma, Texas, and Kansas, and the regulatory commissions of those states entered into an informal agreement in an effort to limit the production of their respective states to certain fixed amounts. (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 21.) Although this agreement, aided by the use of troops in Texas and Oklahoma, succeeded for a time during the latter part of 1931 and 1932 in stabilizing the price structure of petroleum, by the end of that year the production of oil had again gotten completely out of hand, culminating in the second collapse of prices in the spring of 1933.[67]

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comity. See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 215.

[67] One of the factors contributing to the inability of the states to enforce compliance was their lack of power to prevent the movement of oil produced in excess of quota when consigned to an interstate destination. Whether oil has been produced in excess of allowable cannot, of course, be determined until after the oil is produced, at which time the oil may already be in the course of movement to consignees. Numerous injunctions were obtained against state regulatory officials by producers and refiners on the ground that the consignments in question of crude or its products were to destinations in another state. The railroads felt themselves

Demand for Federal action.—Faced with this long history of unsuccessful attempts to protect the national market for oil, the industry and the producing States were compelled to conclude that if stabilization of the interstate market was to be achieved, the Federal Government must coordinate the activities of the oil producing States and the industry by providing sanctions to enforce a scientific determination of reasonable market demand between and among the States.[68] From all the pro-

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bound to accept for interstate shipment all oil regardless of the legality of its production, and obtained an injunction against interference by the state authorities (Oil and Gas Journal, February 23, 1933 (Bredberg, Many Injunctions Granted in East Texas District; New Locations and Completions Decline), p. 57). It was a simple matter for oil producers and refiners, in order to evade the authority of the state regulatory bodies, to make initial consignments to consignees in another state and to divert such consignments while in transit to local consignees.

[68] "We have tried every alternative. When the industry in 1930 attempted after long conferences to make effective an agreement for a limitation upon production, the Attorney General of the United States at that time declared such an agreement unlawful. The Governors of the Oil States proposed compacts or other interstate agreements, but none of these has been completed. Statutes were drafted, amended and re-amended in the hope of finding some way to prevent the petroleum industry from being demoralized. Armies of men held oil fields under martial law in order to make effective an attempted control of production. Operators both as individuals and as companies voluntarily sacrificed large portions of their production in order that the industry might balance supply with demand. The courts have been flooded with cases involving these efforts. The legislatures of oil States have been forced to devote a disproportionate amount

ducing areas had come a demand for Federal control. (Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73rd Cong., 1st Sess., pp. 140–160, 173–182, 214–222, 241, 261, 269–273; Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Cong., 1st Sess., pp. 73–81, 96–120; Appendix B, pp. 139–161.) The governors of all the principal oil-producing States had urged the President and Congress to act, proclaiming the futility of further efforts at State control. (Hearings, S. 1712, H. R. 5755, Senate Committee on

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of their time to the attempted solution of this production problem. Each effort has failed, since neither individual effort nor the effort of any single State or any group of States, could meet an issue which was of an interstate character and required both the approval and the cooperation of the Federal government to make it succeed. Through the National Industrial Recovery Act and this code, authorized under the Act, we believe we can achieve this control of production. * * *

"This code being an overall picture over the United States will bring about coordination, so that one State or one area will not be able by reducing prices below the cost of production to seize the demand from other States from other areas. On this point, Mr. Administrator, depends the success of this code, or the success of any movement which will restore the oil industry. This is the meat in the cocoanut." (Statement of Wirt Franklin, President of the Independent Petroleum Association of America, Hearings before the National Recovery Administration on the Petroleum Code, pp. 3021–3024).

The vain efforts in the spring of 1933 to rescue the industry through means other than the binding sanctions of federal law are described in the Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Cong., 1st Sess., pp. 97–98, Appendix B, pp. 152–155.

Finance, 73d Cong., 1st Sess., pp. 43, 46–50, Appendix B, pp. 165–175.)

D. Under the decisions of this Court the production-control provisions of the Petroleum Code are a valid exercise of the commerce power of Congress

The general proposition that Congress under the commerce power may regulate intrastate activity which burdens or obstructs interstate commerce is fully established (*supra*, p. 45). In every such case the only constitutional question is whether the effect of the local activity upon interstate commerce is sufficiently direct and substantial to justify regulation.

Respondents have already attempted to demonstrate the direct, immediate, and substantial relationship between the production of crude oil and interstate commerce. Commerce in oil and oil products is primarily interstate (*supra*, pp. 48–61). Because of the standardized nature of these products, the relative inelasticity of demand, the fluidity of movement from sources of production to points of distribution and consumption, and the integrated and widespread business of many concerns in this industry, variations in volume of production have immediate and sharp repercussions upon interstate commerce in crude oil and gasoline, and particularly upon prices in interstate transactions (*supra*, pp. 68–85). Not only is the prosperity and very existence of a large part of this vast interstate trade threatened by the price fluctuations which flow from changes in volume of production, but uncontrolled production in "flush", low-cost producing areas causes a diversion in the interstate movement of oil from areas of higher-cost "stripper" wells (*supra,* pp. 92–95). It also leads to the abandonment of these wells and the elimination of interstate commerce in their products (*supra,* p. 92–95). Finally, the States alone, due to their conflicting interests, cannot or will not exercise any effective, coordinated control (*supra,* pp. 97–105). It is submitted that the real and serious effect upon interstate commerce thus shown justifies Congress in protecting that commerce by controlling production in the manner set forth in the code for the petroleum industry.

A striking illustration of the exercise of Federal power to control local activity affecting the price of commodities in interstate commerce is *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1. This case involved the Grain Futures Act, which regulated contracts for sales of grain for future delivery, most of which, this Court said (p. 36), "do not result in actual delivery, but are settled by offsetting them with other contracts of the same kind." The sales were between buyers and sellers in the city of Chicago; but it was contended that these sales of futures affected the price at which cash grain was sold throughout the country. Thus the question was not one of regulating the movement of a commodity in interstate commerce, or of directly regulating the price of a commodity moving in interstate commerce, but of regulating purely local activity which Congress had found (see pp. 4–5) affected the price of commodities moving in interstate commerce and caused price fluctuations which burdened and obstructed interstate commerce. In the words of the Court (p. 36), the questions presented were whether such speculative sales were subject to "abuses which are a burden and obstruction to interstate commerce in grain", and whether such burden and obstruction "can be said to be direct." In giving an affirmative answer to these questions the Court said (pp. 39, 40):

> Manipulations of grain futures for speculative profit * * * exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only * * * justifiable hedging but disturb the normal flow of actual consignments.
>
> * * * * *
>
> If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced,[69] it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in

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[69] The reference is to *United States* v. *Patten*, 226 U. S. 525, sustaining the validity of an indictment under the Sherman Act charging a corner in contracts for the future delivery of cotton on the New York Cotton Exchange.

> that commerce are equally direct. The question of price dominates trade between the States. *Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.* (Italics ours.)

If Congress can regulate sales (not made in the course of interstate commerce) which affect the country-wide price and thereby the country-wide commerce in grain, it would seem to follow that Congress can regulate the production of oil, which affects the country-wide price of that commodity and, more directly than in the case of dealings in grain futures, interstate commerce therein.

The charges made by commission men, dealers, and traders for their services in buying, selling, and handling cattle, sheep, and hogs on a stockyards, which Congress can regulate (*Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420) can hardly be said to burden or affect interstate commerce as vitally as the volume of oil production affects prices of oil products in interstate sales and the character and direction of the movement of these products in interstate commerce.

Certain cases arising under the Interstate Commerce Act also show that the commerce power warrants Federal regulation of local acts although these acts affect interstate commerce only remotely. *Colorado* v. *United States,* 271 U. S. 153, sustained an order of the Interstate Commerce Commission authorizing an interstate railroad to abandon operation of an unprofitable branch line lying wholly within a State. The order was sustained upon the theory that losses incurred in operating the branch line might prejudice the carrier's ability to serve interstate commerce efficiently, but the Court did not find it necessary to set forth the extent of the local operating losses or their relation to the carrier's gross or net income. *Florida* v. *United States,* 292 U. S. 1, sustained an order of the Commission which set aside certain intrastate log rates upon the ground that they were unremunerative and therefore discriminated against interstate commerce, although over a two-year period the Commission's order increased the carrier's revenue by less than 3/10 of 1% of its total freight revenue during approximately the same period.[70]

In *United States* v. *Ferger,* 250 U. S. 199, where the defendant was indicted for forging interstate bills of lading, this Court rejected the defense that the statute could not be constitutionally applied to a forgery which did not represent or relate to any actual or contemplated interstate commerce, saying (p. 203) that the commerce power—

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[70] The carrier's total freight revenue for the years 1929 and 1930 was $99,616,669. (*Georgia Public Service Comm.* v. *Atlantic Coast Line R. R. Co.*, 186 I. C. C. 157, 166.) During the period February 8, 1929, to January 31, 1931, the carrier's revenue from the rates prescribed by the Commission exceeded that which would have been collected under the lower rates which the Commission set aside by $290,283. (*Ibid*, p. 167.)

> must include the authority to deal with obstructions to interstate commerce * * * and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves.

It can hardly be questioned that the production of oil under the circumstances shown here has a more direct and substantial "relation to and influence upon interstate commerce" than the circulation of forged bills of lading.

Cases under the Sherman Act are of particular significance to questions at issue here. Restraints of trade and monopolistic combinations are held to be within that Act and within the commerce power of Congress if they substantially affect interstate commerce, although the means by which the restraint is carried out operate before interstate commerce has begun (*Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310; *Standard Oil Co.* (*Indiana*) v. *United States,* 283 U. S. 163, 169) or after it has ended (*Bedford Cut Stone Company* v. *Journeymen's Stone Cutters' Association,* 274 U. S. 37, 46–47; *United States* v. *Brims,* 272 U. S. 549; *Loewe* v. *Lawlor,* 208 U. S. 274, 301). In *Local 167* v. *United States,* 291 U. S. 293, involving a conspiracy in violation of the Sherman Act to restrain sales and movement of live poultry within the metropolitan area of New York City, the Court said (p. 297):

> It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce [citing cases]. But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce.

The Sherman Act is based upon the assumption that interstate commerce is best protected from the evils of monopoly and price control by the maintenance of competition. One of the evils which Congress sought to prevent was the creation of combinations clothed with power to affect the consuming public injuriously through the exaction of monopoly prices. In few of the cases did the culmination of this evil appear to be imminent. The Federal power was exerted to prevent acts which tended to create monopolies, which in turn *might result in* exaction of monopoly prices. And it has been held that Congress had the power, in carrying out the policies embodied in that statute, to prohibit local acts (including interruption of or restraint upon production) which affected interstate commerce directly or substantially. In the Recovery Act, Congress adopted the view that, under the conditions then prevailing, interstate commerce might require protection against the demoralization resulting from overproduction or nonremunerative prices. It should equally have the power, in carrying out this policy, to regulate local acts (including production) when they affect interstate commerce directly or substantially.

The Sherman Act and the Recovery Act are thus based upon different conceptions of sound economic policy or upon the view that differing industrial and economic conditions call for the application of different remedies. But both have the same objectives, protection and promotion of interstate commerce. And there can be no difference in constitutional power where the purpose is to protect interstate commerce against high prices and where the purpose is to protect it against low prices. It is the function of Congress to choose between economic theories and to determine the particular policy deemed necessary for the protection of interstate commerce. *Northern Securities Co.* v. *United States,* 193 U. S. 197, 337.

United Mine Workers v. *Coronado Coal Co.,* 259 U. S. 344, and *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, show that even comparatively minor dislocations of interstate commerce resulting from local acts may be sufficiently direct and substantial to warrant regulation under the commerce power. The plaintiffs in these cases brought suit for triple damages under the Sherman Act against officers of a labor union and against the union, charging that they had conspired to restrain the plaintiffs' interstate trade in coal and had effected such restraint by destroying valuable mining properties. In the first case this Court held that restraint of interstate commerce had not been established and the verdict for the plaintiffs was therefore reversed. After citing certain cases, the Court said (259 U. S. 344, 408):

> It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint.

At the second trial, evidence was presented that one of defendants' purposes had been to destroy the power of the plaintiffs to send their nonunion output (about 5,000 tons a day) into interstate commerce to compete with the product of union mines. This Court thereupon reversed a directed verdict for the defendants, stating (268 U. S. 295, 310):

> The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control *the supply* entering and moving in interstate commerce, or *the price* of it in interstate

> markets, their action is a direct violation of the Anti-Trust Act.[71] (Italics ours.)

There is a close parallel between the second *Coronado* case and the case at bar. In the one, the justification for Federal control is the effect upon commerce of a stoppage of production; in the other, it is the effect upon commerce of overproduction. In the one, the exercise of Federal power was occasioned by conditions which concerned production of an insignificant portion of the country's coal resources, coupled with a possible slight effect upon price. In the other, Federal power has been exercised by reason of the fact that conditions governing oil production present a constant threat to the entire fabric of interstate commerce in that commodity.

In *Standard Oil Co.* (*Indiana*) v. *United States,* 283 U. S. 163, certain oil companies had pooled their patents for the processing of gasoline by "cracking", and had agreed upon uniform licenses for refineries. The Government alleged in a suit brought under the Sherman Act (p. 165) that the defendants were restraining interstate commerce by controlling that part of the supply of gasoline which was produced by the cracking process. While this Court held that the agreement did not constitute an unreasonable restraint of trade, it pointed out that if the defendants' acts had tended to limit the supply of gasoline, they would have been within Federal power. The Court said (p. 169):

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[71] A Congressional mandate will serve the same purpose in positive regulation as the intent required to be shown in cases under the Sherman Act. See *Stafford* v. *Wallace,* 258 U. S. 495, where the Court said (p. 520):

> The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint.

> Moreover, while manufacture is not interstate commerce, agreements concerning it which tend to limit the supply or to fix *the price* of goods entering into interstate commerce, or which have been executed for that purpose, are within the prohibitions of the Act. *Swift & Co.* v. *United States,* 196 U. S. 375, 397; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310; *United States* v. *Trenton Potteries Co.,* 273 U. S. 392. (Italics ours.)

The analogy between the kind of situation dealt with under the Sherman Act and the present case may be demonstrated by a hypothetical illustration. If the producers in the East Texas field were to enter into an agreement which provided for assigning a quota to each producer and for limiting his output to such quota, in order that petroleum prices might be raised throughout the country, there would be little question that such an agreement would constitute a restraint of interstate commerce within the Sherman Act, provided the restraint was an unreasonable one.[72] If Congress has the power to forbid production control under a statute which treats high prices as detrimental to interstate commerce, it must have the power to curb excessive production under a statute which treats low prices as detrimental to interstate commerce.

It has previously been shown (*supra,* pp. 92–95) that overproduction of oil diverts the flow of commerce from the output of high cost "stripper" wells to the output of low cost "flush" wells. This diversion of commerce from one area to another is analogous in its effect upon interstate commerce to the diversion in time of shipment which results when local acts cause a commodity like grain either to be then consigned in interstate commerce or to be withheld from such commerce. See *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 38–40.

It has also been shown (*supra,* pp. 92–95) that the diversion of commerce caused by the low prices resulting from "flush" production force the abandonment and permanent loss of "stripper" wells.

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[72] *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, involved the legality under the Sherman Act of an agreement of certain producers of bituminous coal to sell all of their coal through a common selling agency, which agency, if it could not sell the entire output of the companies represented, was to apportion available orders among them upon a stated basis. In substance, though not in form, this was an agreement to limit production since no producer would mine more coal than he had opportunity to sell. While this Court held that the agreement did not unreasonably restrain trade and therefore did not violate the Sherman Act, it assumed that an agreement of this character was within the commerce power of Congress.

These conditions are directly destructive of commerce. What this Court said in *Appalachian Coals, Inc.* v. *United States* (*supra*, p. 372) is directly applicable here:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This Court has said that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift and Co.* v. *United States,* 196 U. S. 375, 398. With the extraordinary increase in the facilities for and the rapidity of communicaton and transportation, the interaction of forces governing production and forces determining the movement of goods in commerce has been greatly increased. By reason of these changes, matters such as the production of oil which formerly may have been beyond the commerce power may now be within it, because their effect upon interstate commerce has become more direct, immediate, and powerful. In *Stafford* v. *Wallace,* 258 U. S. 495, it was recognized that the practical course of interstate business had expanded with the growth of the country. The words of this Court (pp. 518–519) are directly applicable here:

> The application of the commerce clause of the Constitution in the *Swift Case* was the

> result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This Court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.
>
> The principles of the *Swift Case* have become a fixed rule of this court in the construction and application of the commerce clause.

Intrastate transactions can be regulated by the Federal Government where these transactions are so interwoven with interstate commerce that the latter cannot be effectively regulated without control of the former. ***Minnesota Rate Cases,*** 230 U. S. 352; ***Houston E. & W. Texas Ry. Co.*** v. ***United States,*** 234 U. S. 342. Crude oil which is sold within the State of production and crude oil shipped to another State or sold without the State of production are of precisely the same character and are used for the same purpose.[73] The producer whose oil is sold within the State of production draws his oil from the same pool as one whose oil is sold without the State and, if the former producer increases his production, he compels the latter likewise to increase in order to avoid losing his share of the oil within the pool. The oil of the former producer contributes to the total supply and affects the interstate price regardless of where it is sold or consumed. It either competes directly with oil moving in interstate commerce or, if it fills a merely local demand, it forces other oil into the channels of interstate commerce. No effective regulation of interstate movement or price is therefore possible without control of the sources of supply, which inevitably condition every interstate aspect of the industry. And since it has been shown that the volume of production affects every aspect of the industry and that difficulties engendered at this central point spread out and adversely influence the entire field of interstate and intrastate commerce in oil and oil products, under these circumstances, it is submitted that the Federal Government is not required by the Constitution to confine itself to the symptoms manifesting themselves in interstate commerce, but it may undertake the only kind of protection of commerce which is adequate, and deal with the difficulty at its source, through control of production.

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[73] See *Standard Oil Co.* (*Indiana*) v. *United States*, 283 U. S. 163, 176–177, where the Court pointed out that ordinary or straight-run gasoline is indistinguishable from gasoline made by the cracking process and that the two are either mixed or sold interchangeably, so that the defendants could not effectively control the supply or fix the price of cracked gasoline unless they could control total gasoline production from all sources.

This Court has held in cases under the Interstate Commerce Act that the Federal power may be extended over local activities which must be regulated in order to insure the economic well-being of the interstate railroads. In dealing with the rate-making power of the Interstate Commerce Commission this Court has repeatedly sustained the power of the Commission to regulate intrastate rates, not only for the purpose of removing discriminations against persons or localities, but also to insure an adequate *interstate* transportation system. See *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Co.,* 257 U. S. 563; *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456; *United States* v. *Louisiana,* 290 U. S. 70; *Florida* v. *United States,* 292 U. S. 1.

The power to promote commerce is not limited to the fostering of agencies of transporation; ever since *Gibbons* v. *Ogden,* 9 Wheat. 1, it has been recognized that commerce is much broader than transportation. It follows that if the Federal Government can regulate intrastate rates in order to insure an adequate interstate transportation system, it should equally have the power to regulate intrastate activity in order to insure the economic well-being of interstate industries other than railroads.

It is true that the railroad cases involve an application of Federal power to persons who are themselves engaged in interstate commerce. It is submitted, however, that the principle therein embodied is applicable to all those elements in an interstate industry the regulation of which is essential to the well-being of the industry.[74]

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[74] Mr. Justice Johnson in his concurring opinion (9 Wheat. 1, 229–230) defined commerce as follows:

> Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation.

That the commerce clause was intended by the framers of the Constitution to apply to those subjects requiring national legislation with which the States were separately incompetent to deal is indicated by the history of the clause in and at the time of the Constitutional Convention. See Stern, That Commerce Which Concerns More States Than One, 47 Harvard Law Review, p. 1335 (June 1934). In the *Minnesota Rate Cases*, 230 U. S. 352, 398, the Court said:

> The words "among the several States" distinguish between the commerce which concerns more States than one and that commerce which is confined within one State and does not affect other States. "The genius and character of the whole government," said Chief Justice Marshall [quoting from *Gibbons* v. *Ogden*, 9 Wheat. at 195] "seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government."

See also *Gibbons* v. *Ogden*, 9 Wheat. 1, 194, 195; *Second Employers' Liability Cases*, 223 U. S. 1, 46.

Finally, the emergency conditions existing at the time of the enactment of the Recovery Act, and still existing, may have the effect of rendering certain types of transactions which in normal times have only an indirect or incidental effect on interstate commerce, matters of great moment and powerful effect. In the national emergency, the situation had to be viewed as a whole. When overcapacity, overproduction, cut-throat competition, and various unfair trade practices existed side by side with unemployment and reduced purchasing power, and as a consequence the commerce of the country was crippled (*infra*, pp. 130–133), Congress might reasonably conclude that drastic action commensurate with the needs of the situation was required. In *Stafford* v. *Wallace,* 258 U. S. 495, 521, this court, speaking of ordinary times, said that it "will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent." The doctrine that while emergency does not create power, emergency may furnish the occasion for the exercise of power, has been applied to the interpretation of, not only the due process clause (*Block* v. *Hirsh,* 256 U. S. 135; *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242), but the constitutional provision that no State shall pass a law impairing the obligation of contracts (*Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, 426), and the commerce clause (*Wilson* v. *New,* 243 U. S. 332, 348).[75] An emergency, while not creating powers, may nevertheless bring to the attention of Congress and the courts conditions and relationships not previously recognized which call for the application of powers admittedly in existence.

The particular provisions with which the Court is concerned in the case at bar are but a small part of a wide-spread effort to rehabilitate commerce and industry inaugurated under the Recovery Act. In Section 1 of that Act Congress found that:

> A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist.

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[75] In *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 426, after referring to the commerce case of *Wilson* v. *New*, 243 U. S. 332, the Court said:

> The constitutional question presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions. * * * When the provisions of the Constitution, in grant or restriction, are specific, so particularized as not to admit of construction, no question is presented. * * * But where constitutional grants and limitations of power are set forth in general clauses, which afford a broad outline, the process of construction is essential to fill in the details.

Ex parte Milligan, 4 Wall. 2, relied upon by petitioners, involved a provision " of the Constitution [the habeas corpus clause] * * * so particularized as not to permit of construction.

It was declared:

> * * * to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof. * * *

In this statement Congress manifested its appreciation of the fact that the general industrial depression had severely burdened interstate commerce and that interstate commerce could not be substantially benefited without an effort to strike at the causes of the depression.

The evident purpose of the Recovery Act and the declaration of Congress are sufficient to distinguish the case of *Hammer* v. *Dagenhart,* 247 U. S. 251, which denied the power of Congress to prohibit the interstate shipment of products of child labor. As that case was interpreted by this Court in *Brooks* v. *United States,* 267 U. S. 432, 438, the child labor law was held unconstitutional because in that legislation Congress was not really attempting to regulate interstate commerce, but was attempting "to regulate labor in the State of origin by an embargo on its external trade." Since this Court concluded that Congress was not there concerned with protection of interstate commerce, but that its purpose was to control the social policy of the various States with respect to mining and manufacture, the statute could not escape invalidity because it was cast in the form of a regulation of interstate commerce. See *Hill* v. *Wallace,* 259 U. S. 44; *Bailey* v. *Drexel Furniture Co.,* 259 U. S. 20. In Title I of the Recovery Act, on the contrary, Congress not only declared its purpose to be to free interstate commerce from the burdens which shackled it, but the provisions of the title and the circumstances under which it was enacted plainly evidence this purpose.

Hammer v. *Dagenhart* may also be distinguished upon the ground that no attempt was made to show that the employment of child labor had any substantial effect upon interstate commerce in the articles of manufacture. It was contended that factories in States which prohibited child labor were placed in an unequal competitive position with factories in other States because of interstate commerce in the goods manufactured, but there was no suggestion that the practice aimed at burdened, obstructed, or diminished the flow of interstate commerce.

II

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE REASONABLE REGULATIONS DESIGNED TO ACHIEVE PROPER OBJECTIVES OF THE FEDERAL GOVERNMENT, OF VITAL CONCERN TO THE NATION; THEY DO NOT, THEREFORE, INVOLVE ANY INFRINGEMENT OF THE RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

In the recent case of *Nebbia* v. *New York,* 291 U. S. 502, this Court has defined the scope of the Fifth Amendment as a limitation upon the power of the Federal Government in the following language (p. 524–525):

> Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. Touching the matters committed to it by the Constitution, the United States possesses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means

> selected shall have a real and substantial relation to the object sought to be attained.

"The object sought to be attained" by the provisions of the Petroleum Code here in question, though such provisions are to be dealt with largely on the basis of the special conditions obtaining in the oil industry, must, nevertheless, be considered in the light of all of the purposes of the Recovery Act under the authority of which the Petroleum Code was promulgated. That Act was expressly designed to remove obstructions to interstate and foreign commerce brought on by a long-continued depression of unparalleled severity. The existence of a national emergency and its effect upon interstate and foreign commerce and upon the welfare of the American people was expressly declared by Congress in the Act (Sections 1 and 2 (c), *supra,* pp. 7–9).

This Court has already had occasion to take notice of the crisis which confronted the nation in the spring of 1933. *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344; *Home Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398. Years of declining business activity[76] and mounting insolvencies and bank closures had culminated in March of that year, with the closing by Presidential proclamation of the banks throughout the country. Prices had fallen drastically.[77] Millions had been thrown out of employment, and the wages of many of those still employed had fallen below the subsistence level.[78] These persons and their families were dependent for their very existence upon public and private charity. In an effort to survive during this period of low business activity, businesses everywhere resorted to drastic wage cuts and other methods of reducing labor costs in the attempt to maintain or increase their output at a lowered cost of production, and engaged in almost every conceivable type of unfair competitive practice.

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[76] From an average of 119 for the year 1929 (1923 to 1925=100) industrial production had dropped to 63 in February 1933. (Department of Commerce, Bureau of Foreign and Domestic Commerce, World Economic Review, 1933, p. 84 (from Federal Reserve Board indices).) Construction activity had dropped from 117 in 1929 to 19 in February 1933, and to even lower levels in the succeeding months. (*Id.* p. 112 (from Federal Reserve Board indices).)

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[77] Commodity prices fell from 95.3 in 1929 (1926=100) to 59.8 in February, 1933. (World Economic Review, *supra*, at p. 92 (from Bureau of Labor Statistics).)

[78] The number of unemployed in March 1933 has been estimated by the American Federation of Labor at 13,689,000, by the Cleveland Trust Company at 13,833,000, and by the Alexander Hamilton Institute at 17,169,000. (Proceedings of 53d Ann. Convention of Am. Fed. of Labor, p. 312; Business Conditions Weekly, Mar. 10, 1934; Clev. Trust Co. Business Bulletins, Jan. 15, 1934.) The estimates of the American Federation of Labor show an increase in unemployment from January 1930 to March 1933 of over 10,000,000; the estimates of the Cleveland Trust Company show an increase in unemployment during this same period of over 10,800,000; the estimates of the Alexander Hamilton Institute show a rise in unemployment of over 13,000,000 from 1929 to March 1933.

The number of persons employed in factories fell from 101 in 1929 (1923 to 1925=100) to 59.4 in February 1933.

Prices, wages, and employment were driven to lower and lower levels. The extent of the decline of purchasing power is indicated to some extent by the drop in the national income. The income received by individuals in the United States declined from 81 to 49 billion dollars, or 40%, from 1929 to 1932. (Sen. Doc. No. 124, 73d Cong. 2d Sess., National Income, 1929–1932, p. 10.[79]) In those industries in which it was possible to segregate wages from other payments (mining, manufacturing, construction, and transportation) the decline from 1929 to 1932 in wage payments was from 17 billion to $6,840,000,000, or 60%. (*Id.,* at p. 14.)

The full extent of the effect of all of these factors upon interstate commerce is roughly indicated by the decline in railway freight traffic. The aggregate of whole carloads of freight declined from 52,827,925 carloads in 1929 to 28,200,000 in 1932, a decline of 46%. (Information Bulletin No. 639 of Car Service Div. of Am. Ry. Ass'n.) Revenue

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(World Economic Review, *supra*, at p. 101 (from Federal Reserve Board indices).) The total pay rolls dropped even further than the total number of persons employed—from 107 in 1929 (1923 to 1925=100) to 40 in February 1933. (*Id.*, at p. 102 (from Federal Reserve Board indices).) The average weekly earnings of factory employees in 25 selected industries fell from $28.54 in 1929 to $16.13 in February 1933. (*Id.*, at p. 107 (from National Industrial Conference Board).)

[79] This report shows (p. 10) that the greatest previous decline since income data have been tabulated (1909) was in the post-war depression of 1921, when there was a contraction of only 14.4%.

freight originating on Class 1 roads declined from 1,339,091,000 tons in 1929 to 646,223,000 tons in 1932, a decline of 51%. (Department of Commerce, Bureau of Foreign and Domestic Commerce, Statistical Abstract of the United States, 1933, p. 357.[80])

In Title I of the Recovery Act Congress sought to remedy the conditions which had thus grievously affected interstate commerce. It declared its objectives in the following language (Section 1):

> It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under ade-

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[80] Although available records do not distinguish between intrastate and interstate traffic, it is well known that railway traffic is predominantly interstate and only to a minor extent intrastate. While part of the decline in railway traffic is doubtless attributable to the increase in motor-truck traffic, the competition of motor transportation is mainly with the intrastate traffic of railroads. Intercity truck traffic is only about 20% interstate (Coordination of Motor Transportation, 182 I. C. C. 263, 377). Moreover, the competition of truck traffic affects primarily the *less-than-carload* traffic of the railroads and total carloading figures do not reflect to any considerable extent the increase in the competition of truck traffic. It may fairly be said, therefore, that the decline in total carloadings represents more or less accurately the effect of the depression itself upon railroad traffic.

> quate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

These objectives were to be achieved wherever possible by cooperation from industrial groups. Sections 3 (a) and (b) of the Act, therefore, provide that any trade or industrial association or group truly representative of the trade or industry concerned may submit a code of fair competition the provisions of which, when approved by the President, shall become the standards of fair competition for that trade or industry. Express provision is made to assure that such codes would not be employed to eliminate or oppress small enterprises or to permit monopolies or monopolistic practices. (Section 3 (a).) It was manifestly impossible for Congress to provide detailed legislation for each trade or industry. Moreover, any attempt at such legislation would have delayed other national measures which the public welfare demanded (*infra*, pp. 151–152). It was not unreasonable, arbitrary, or capricious for Congress to conclude that the protection of interstate and foreign commerce required prompt and simultaneous action with respect to the hundreds of trades and industries whose activities had so injuriously affected the free flow of such commerce, and that the ends sought to be attained could be achieved by means of the formulation of codes at the instance of the industries or trades themselves.

In the case of the oil industry the need for prompt measures was particularly acute. The peculiar conditions governing the production of oil had caused the complete demoralization throughout the country of the price structure of this industry. The States had proved themselves incapable of regulating these conditions and their conservation laws were being flagrantly disregarded. Destructive competition prevailed throughout all branches of the industry. In this competitive struggle the ability of the large integrated companies, because of their large financial resources, to balance losses in one section of the country with profits obtained elsewhere threatened the extinction of the small producers, refiners or marketers. See Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Logan, Stabilization of Petroleum Industry) p. 617. Production from the "flush" fields had absorbed a large part of the national market of the "stripper" well areas, throwing many men out of employment, and was bidding fair at the time of the adoption of the Petroleum Code to monopolize the entire national market of most of the wells in the "stripper" areas. (*Supra,* p. 93.) The consuming public had received small benefit from the severe decline in prices. During the period when crude oil dropped to a few cents a barrel the average retail price of gasoline had dropped only a few cents a gallon.[81]

Tremendous wastes of this important natural resource had resulted from the severe break in the price structure. The decline in prices below the lifting cost in the "stripper" well areas had caused the irretrievable loss of valuable reserves of oil and threatened still further losses. (*Supra,* p. 94.) Lower prices, themselves caused by excessive production from the flush fields, had compelled even greater production in these fields (*supra,* p. [illegible]70) resulting in the premature exhaustion of the reservoir energy so essential to the maximum recovery of oil and greatly diminishing the amount of oil recoverable from these fields. (Report on Pipe Lines, *supra,* at pp. ix–xii, Appendix B, pp. 22–27; Federal Oil Conservation Board, Report III

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[81] When the price of crude oil fell to extremely low levels between January and August 1931, the average retail price of gasoline to the consumer dropped only 2.35 cents; the drop in retail prices during the collapse of crude prices in 1933 was only 1.72 cents. See Oil and Gas Journal, January 25, 1934 (Smiley, All Records Smashed in 1933 When Motorist Paid Only 12.76 Cents for His Motor Fuel) p. 42. In this article is a table showing average service-station prices of gasoline, excluding taxes, for 50 representative cities by months for the years 1931, 1932, and 1933.

(1929), p. 21 *et seq.,* Appendix B, pp. 92–95; Petroleum Development and Technology, 1934, American Institute of Mining and Metallurgical Engineers (Umpleby, Efficient Utilization of Reservoir Energy) p. 168.) Such excessive forcing of the flush fields had led to the blowing and burning of billions of cubic feet of natural gas, rich in energy and gasoline content. See Report on Pipe Lines, *supra,* at p. x, Appendix B, pp. 22–23. Excessive production had resulted in the accumulation of large stocks of oil which faced losses through fire and evaporation (Petroleum Development and Technology, 1932, American Institute of Mining and Metallurgical Engineers (Umpleby, Changing Concepts in the Petroleum Industry) pp. 38, 41). Excessively low prices had stimulated inefficient refining processes (R. 82). With crude at extremely low prices refiners found it more profitable to extract by skimming only 20% to 30% of gasoline, than to employ the improved refinery technology which has made it possible to secure by cracking upwards of 50% of gasoline. (Federal Oil Conservation Board, Report V (1932), pp. 27–29; Pogue, Economics of Petroleum, pp. 77, 145.)[82] Since gasoline is the major product of petroleum, it is apparent that any reduction in the amount of gasoline recovered constituted as serious a waste as the abandonment of the oil in the ground or its waste by evaporation or burning on the surface. After a small yield of gasoline had been skimmed from the crude, the remainder must be sold as fuel oil or other products. This inferior use of petroleum products was largely responsible for the supplanting of coal as an industrial fuel and had seriously affected interstate commerce in coal. See *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 351, 361.

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[82] "Where the crude is used in the raw state, practically the whole output is fuel oil. With topping or skimming refining in its various stages, from 50 to over 90 percent of the raw material is turned out as fuel oil. With transition to complete refining, the proportion of fuel oil becomes decreasingly less and partly of a superior quality (distillate gas oil); and when cracking refining is introduced, fuel oil (or

These wastes, which followed in the wake of a demoralized price structure brought on by the competitive conditions inherent in the production of oil, were of particular concern to the nation because of the limited supply of this important natural resource. It cannot be said with certainty when the supply of petroleum in the United States will be exhausted, but all available estimates agree that the known fields will not supply the national consump-

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rather its preferred variety, gas oil) becomes in turn the raw material for further refining, and the yield of fuel oil is cut down in still further degree.

"Topping and skimming plants go along with flush conditions in oil-field development. They spring up quickly wherever the supply of crude petroleum is abundant and cheap; they require a relatively small outlay of capital and for a period are profitable, in many instances exceedingly so. With high cost crude, however, they become uneconomic, and either cease to operate or change to plants making a fuller extraction of values." (Pogue, Economics of Petroleum, p. 145.)

tive demands for more than 15 years, the largest estimate of known resources being 12 billion barrels against a national demand of 835,000,000 barrels in 1932. See Geological Survey, Review of Petroleum Industry in the United States,[83] April 1934 (Circular No. 11), p. 2; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300. The discovery of new fields is necessarily problematical and "the day of exhaustion is merely postponed a few months or a few years by each new discovery". (Federal Oil Conservation Board, Report V (1932), p. 7.)[84] Although substitutes for

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[83] This publication states that the estimates since 1922 of known resources are as follows (p. 3):

	Billion Bbls.
1922 United States Geological Survey and American Association of Petroleum Geologists (The oil supply of the United States: Dept. Interior Press Notice, 1922)	5.0
1925 American Petroleum Institute (American Petroleum Supply and Demand, p. 3, American Petroleum Institute, 1925)	5.3
1926 Federal Oil Conservation Board (Federal Oil Conservation Board, Report I, p. 8, 1926)	4.5
1932 Federal Oil Conservation Board (Federal Oil Conservation Board, Report V, p. 7, 1932)	10.0
1933 Valentin R. Garfias (Am. Inst. Min. Met. Eng. Trans., Vol. 103, p. 253, 1933)	12.0

[84] "In 1926 the extent of known domestic reserves was about 4½ billion barrels. Reserves made known by later discoveries have raised the current classification of known reserves to 10 billion barrels; future discoveries may raise it further; but the day of exhaustion is merely postponed a few months or a few years by each new discovery. Each year this country consumes or exports some 800,000,000 barrels more than it imports. In other words, as has been said by one authority, the equivalent of from 8 to 10 new pools, each containing 100,000,000 barrels of recoverable oil, must be discovered each year to maintain our present margin of domestic reserves. The wheels of 80 percent of all our

natural oil may be obtained through the manufacture of petroleum from coal, the distillation of oil from shale and the use of alcohol in place of gasoline, no process is known which can compare in cheapness with that of merely tapping reserves already created by nature.[85] See Geological Survey, Review of the Petroleum Industry in the United States, April 1934 (Circular No. 11), pp. 37–50; Federal Oil Conservation Board, Report II (1928),

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horsepower, fixed and automotive, are turned by the consumption of a resource whose known reserves have never been many years ahead of exhaustion. Although we possess large quantities of substitutes in oil shale and coal, capable of distillation, new processes must be discovered before their refining costs become competitive with costs of producing motor fuel from crude oil." (Federal Oil Conservation Board, Report V (1932), p. 7).

[85] The problem of preventing waste is not simply to prepare for a day decades hence when all oil shall have been exhausted "but to minimize the readjustment to a stage of increasing cost which in some of the older lands has already arrived and in the United States is only a matter of time. The prospect is clear enough to make the prevention of needless waste a major social responsibility. As far as the mineral and power resources are concerned, the long time problem of conservation merges with the immediate social problem of overdevelopment and overproduction. Both are concerned with controlling the wastes of destructive competition. * * * The task of the present day conservationist is to see that any change in economic organization for the control of production which is undertaken to insure steadier profits and wages should also operate to prevent needless waste of the underlying resources." Report of the President's Research Committee on Social Trends, Recent Social Trends in the United States, 1933, Vol. I, pp. 89–90.

pp. 3–9; Report on Pipe Lines, *supra,* at p. viii, Appendix B, p. 19.

Wastes of oil, an exhaustible natural resource, threatened not only the premature extinction of interstate and foreign commerce in petroleum and its products, but also the continued functioning at low cost of those of the nation's transportation agencies which depend for their operation upon an adequate and economic supply of petroleum and its products. Wastes of oil are of particularly vital concern to the nation because of the importance of this natural resource for the national defense in times of war. It is common knowledge that the naval and air forces of the United States require petroleum products for fuel, as do many of the agencies of army transportation. Indeed, so important to the nation is the existence of an adequate supply of oil in time of war that the competitive conditions attending the production of oil might well have been regulated as a peace-time measure to provide for the national defense.

It thus appears that at the time of the passage of the Recovery Act the competitive conditions inherent in the production of oil had demoralized the price structure of the industry throughout the country and that the severe decline in price had in turn contributed to economic wastes of an important irreplaceable natural resource. To carry out with respect to this industry and the competitive conditions therein, the purposes of Congress expressly declared in the Act, the Petroleum Code was adopted by the industry and approved by the President. The purposes of this Code as stated in its preamble were:

> To meet the emergency in the petroleum industry; to increase employment, establish fair and adequate wages, enlarge the purchasing power of persons related to this industry and improve standards of labor; to conserve the Nation's petroleum resources and to prevent physical and economic wastes which demoralize the national market to the detriment of consumers and producers and to restrain and avoid recurring abuses in the production, transportation and marketing of petroleum and its products which directly obstruct the free flow of interstate and foreign commerce by causing abnormal and disturbing temporary fluctuations in the supply of petroleum or its products that are not responsive to actual demand and prices and disrupt the normal flow of interstate commerce in petroleum and its products; and to prevent the growth of monopoly resulting from unfair competitive practices; and to protect the Nation from an unnecessarily wasteful depletion of this natural resource essential for the national defense and the safety and the continued functioning of the Nation's transportation facilities that are dependent for operation on an adequate and economic supply of petroleum and its products and to accomplish and effectuate the pol-

> icies set forth in the National Industrial Recovery Act. * * *

The production-control provisions of the Code, which are here under consideration, were an important, if not the major, means by which these objectives were to be achieved. The conditions in this industry which have previously been described had made it plain that effective control of the competitive forces governing the production of oil as a means of restoring stability to the interstate market structure of the industry, and of eliminating wastes and other abuses resulting from a demoralized market, was essential, if the principal abuses in the industry were to be eliminated or mitigated. It was through the production-control provisions of the Code that control of these competitive forces was sought.

The long series of unsuccessful attempts by the industry and the States to regulate these competitive forces afforded ample basis for the view that effective regulation could be accomplished only by means of national limitation of production to the amount necessary to meet the national consumptive demand for petroleum products. Prior experience of the Federal Oil Conservation Board (*supra,* p. 72) had proved it possible to compute the national demand accurately. The Petroleum Code seeks, moreover, to make use so far as possible of the experience of the States in prorating an estimated demand among the individual fields and wells within a State. As has been pointed out, the quotas of production directly involved in this case have been fixed not by the Federal Government but by the Railroad Commission of Texas. (*Supra,* p. 15.)

This Court has sustained the power of the States to prorate production to market demand against the claim, analogous to that now made by the petitioners, that such restriction of their production involved a violation of the due process clause of the Fourteenth Amendment. *Champlin Refining Co.* v. *Corporation Commission, supra.*

Based upon the experience of a prior Federal agency in estimating the national demand, making use so far as possible of the power of the States, sustained by this Court, to prorate an estimated market demand among the producers within a State, and designed to achieve objectives which can be accomplished only through the exercise of Federal power, the production-control provisions of the Code are, it is submitted, fully shown to be reasonable regulations aimed at the attainment of purposes within the sphere of Federal power.

III

THE AUTHORIZATION BY CONGRESS OF THE PRESIDENT TO APPROVE CODES OF FAIR COMPETITION IS NOT AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWERS

The doctrine of delegation of powers, based upon the fundamental tripartite division of our Government, prevents Congress from abandoning its constitutional power to the other two branches of the Government. Accordingly, when the necessities of practical administration require Congress to avail itself of executive or administrative agencies, it must intelligently determine the policies which such agencies are to apply to particular factual situations. The precise degree of detail with which the policies are required to be described by Congress must, of course, vary with the character of the subject of regulation. To require the same minuteness of statement in a statute seeking to control in a short space of time a large number of widely different and ever-changing activities, as in a statute dealing with only one kind of transaction, would be to cripple the legislative branch of the Government in those situations in which legislative action is most needed. The doctrine of delegation of powers was intended to protect and not destroy the power of the legislative representatives of the people.

The emphasis upon practical considerations in determining whether a Congressional delegation of authority is constitutional is found in each of the leading decisions of this Court upon the subject. In no case has the determination by Congress as to the standard to guide the administrators of its laws been overthrown.

Beginning with *Wayman* v. *Southard,* 10 Wheat. 1, this Court, speaking through Chief Justice Marshall, adverted (pp. 34–35, 46–47) to the need for flexibility to conform the Federal practice to the judicial systems of the States in a statute delegating to the Federal judiciary power to alter the rules as to process as the courts "in their discretion deem expedient" (p. 39). The statute upheld in *Field* v. *Clark,* 143 U. S. 649, permitted the President to impose reciprocal duties on goods imported from countries which discriminated against American products, a function which could best be exercised by a governmental agency capable of swift action after forming a judgment based upon changing conditions. The law sustained in *Buttfield* v. *Stranahan,* 192 U. S. 470, authorized the Secretary of the Treasury to fix standards of purity, quality, and fitness for consumption with which imported tea must comply. The Court declared (p. 496):

> Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted.

In upholding the statute authorizing the Secretary of War to determine whether a bridge was an "unreasonable obstruction" to navigation, the Court in *Union Bridge Co.* v. *United States,* 204 U. S. 364, emphasized the fact that "investigations by Congress as to each particular bridge alleged to constitute an unreasonable obstruction to free navigation and direct legislation covering each case, separately, would be impracticable in view of the vast and varied interests which require National legislation from time to time" (p. 386). A denial of the right of delegation "would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business" (p. 387).

Similarly, in *United States* v. *Grimaud,* 220 U. S. 506, the impracticability of having Congress provide general regulations for each of the many different forest reservations was held to justify authorizing the Secretary of Agriculture "to make such rules and regulations * * * as will insure the objects" of such reservations.

The Court said (p. 516):

> In the nature of things it was impracticable for Congress to provide general regulations for these various and varying details of management. Each reservation had its peculiar and special features * * *.

Again, in upholding the section of the Interstate Commerce Act which authorizes the Interstate Commerce Commission to make rules in case of car shortage, the Court declared in *Avent* v. *United States,* 266 U. S. 127 (p. 130):

> * * * the requirement that the rules shall be reasonable and in the interest of the public and of commerce fixes the only standard that is practicable or needed.

See also *Mutual Film Corp.* v. *Ohio Industrial Commission,* 236 U. S. 230, 245; *Mahler* v. *Eby,* 264 U. S. 32, 40; *United States* v. *Chemical Foundation,* 272 U. S. 1, 12.

The emphasis upon the practical need for the delegation is clear in *Hampton & Co.* v. *United States,* 276 U. S. 394. In upholding the Flexible Tariff Act, which authorized the President to adjust tariff rates so that they would correspond to the differences in costs of production here and abroad, the Court took into account the inability of Congress to make the necessary adjustments (p. 404), the need for readjustment because of ever-changing conditions (p. 405) and the uncertainty as to the time when the adjustments should be made (p. 407). By way of analogy, it referred to the fixing of just and reasonable rates by the Interstate Commerce Commission, stating that (p. 407):

> If Congress were to be required to fix every rate, it would be impossible to exercise the power at all.

In view of these considerations, it was held sufficient for Congress to establish a general rule declaring an "intelligible principle" (p. 406):

> In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination.

Let us examine briefly the situation confronting Congress in order to determine whether the broad delegation in the Recovery Act was justified by "common sense and the inherent necessities of the governmental co-ordination." The delegation will be found justified (1) by the magnitude of the subject regulated and the need for great flexibility in dealing with different conditions in the various industries, and (2) by the unprecedented economic chaos existing in the spring of 1933, requiring prompt legislative action in many fields.

(1) Congress desired to regulate industry in order to eliminate or mitigate certain evils threatening our whole industrial structure. But these evils took different forms in different industries, and no rigid rule of general application would have been feasible. For Congress to have legislated separately for each industry would have required prolonged study and investigation. Also, flexibility was essential since conditions in all industries are constantly changing. Much more than in the case of bridges and forest reservations (compare *Union Bridge Company* v. *United States,* and *United States* v. *Grimaud, supra*), the attempt at detailed legislation by Congress would have taken so much of its attention and time as to have stopped "the wheels of Government." The only alternative was to establish a flexible procedure applicable generally, which would permit both easy differentiation between industries and rapid amendment to keep up with changing conditions and to correct the mis-

takes which would inevitably be made in commencing a novel program.

The executive branch of the Government alone possessed the needed flexibility. But the executive branch itself would not have sufficient knowledge of conditions to carry the legislative policy into effect by means of such administrative devices as have heretofore been used in filling in the details of legislation. And it would have been impossible to enforce and make effective the program of Congress under the Act without the support and cooperation of the business interests affected. The code device in the Recovery Act was adopted to meet these difficulties. Each industry was to prepare its own code.[86] The President after a hearing to determine

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[86] Petitioners presumably contend that the Act contains an invalid delegation of legislative power because it provides for approval by the President of codes submitted by the industries. It is submitted that this contention is sufficiently answered by the opinion of the court below which stated (No. 260, R. 189–190):

> The groups could really do nothing but advise the President just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that gives it force.

The court below in referring to certain decisions of this Court stated (N. 260, R. 189):

> Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislative power. *St. Louis & Iron Mountain R. R. Co.* v. *Taylor*, 210 U. S. 281. By R. S. Sec. 2324, Congress in providing

whether or not the code would carry out the policy of the Act, could approve or disapprove the code, or approve it subject to such conditions as he might deem "necessary to effectuate the policy" declared in the Act. Congress recognized that it could not itself accomplish the task of either formulating or passing upon the many provisions in numerous codes.

(2) Even in a period of normal legislative activity, a broad delegation would have been required. The reasonableness and necessity of the delegation are especially apparent in the light of the emergency situation confronting the first session of the 73d Congress in the spring of 1933 (*supra,* pp. 130–133). During the ten weeks following the banking crisis of March, 1933, Congress was engaged in preparing and passing measures to cope with the depression on many fronts. The banking laws were changed, and a deposit insurance plan established (Banking Act of 1933 (48 Stat. 162)). The sale of securities was regulated (Securities Act of 1933 (48 Stat. 74)). Credit was pumped into the financial and industrial structure through the Farm Credit Act (48 Stat. 257), changes in the Reconstruction Finance Corporation Act (48 Stat. 119,

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for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. *Erhart* v. *Boaro*, 113 U. S. 527; *Butte City Water Co.* v. *Baker*, 196 U. S. 119.

141), and the Public Works program (Title II of the Recovery Act). A Federal Emergency Relief Administration (48 Stat. 55) and a national employment system (48 Stat. 113) were established to cooperate with State relief efforts. An attempt was made to help home owners burdened with heavy mortgages (48 Stat. 128). Development of the industrial resources of the Tennessee Valley was authorized (Tennessee Valley Authority Act (48 Stat. 58)). An Act was passed for the relief of the railroads (Emergency Railroad Transportation Act of 1933 (48 Stat. 211)). And finally efforts were made to rehabilitate the economic life of the nation through a direct attack on the evils believed to be afflicting agriculture and industry. In the Agricultural Adjustment Act (48 Stat. 31) and the National Industrial Recovery Act, general principles were laid down for the executive branch of the Government to apply to different commodities and industries.

It is apparent that this broad program would not have been adopted in time to have been of any value if Congress had had to legislate for each industry. Time was of the essence in any attempt to put the 14,000,000 unemployed to work. To have required Congress to legislate for each industry would have prevented any legislation at all. To have adopted a single rule applicable to all industries regardless of their diversities would have been unadvisable, inequitable, and impracticable.

Without such a delegation as is embodied in the Recovery Act no effective legislation would have been possible.

Section 3 (a) of the Recovery Act authorizes the President to approve codes of fair competition upon application of representative industrial associations if he finds that the codes are not designed to promote monopoly, will not oppress small business enterprises, and will tend to effectuate the policy of the Act. The policy of Congress set forth in Section 1 (*supra*, p. 8) is to remove obstructions to commerce through cooperative action of industry and labor, to increase purchasing power, relieve unemployment, improve standards of labor, eliminate unfair competitive practices, utilize the productive capacity of industry as far as possible, "to avoid undue restriction of production (except as may be temporarily required)" and to conserve natural resources. These factors are not separate and unrelated. All fit into the general pattern of the plan to improve business through eliminating practices believed responsible for existing conditions and through increasing the capacity to buy what business sells. The codes were to conform to this policy.

That Congress may employ such general terms as "fair competition" in defining legislative policy is clear from the decisions of this Court upholding statutes authorizing the Executive to act "in the public interest" (*New York Central Securities*

Corporation v. *United States,* 287 U. S. 12, 24; *Avent* v. *United States,* 266 U. S. 127); to fix "just and reasonable" rates or charges (Interstate Commerce Act, Sec. 1, par. 5 (49 U. S. C., Sec. 1, par. 5)); to grant certificates based upon public necessity and convenience (*Colorado* v. *United States,* 271 U. S. 153, 168; *Chesapeake & Ohio Ry.* v. *United States,* 283 U. S. 35, 42; *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.,* 289 U. S. 266, 285); or to forbid "unfair methods of competition" (Federal Trade Commission Act, Sec. 5 (38 Stat. 719, 15 U. S. C., Sec. 45)).

Such general expressions are not, of course, employed *in vacuo.* This Court has indicated in the most recent cases involving the question of delegation that such terms as "public interest" take on definite substance from their context, the purposes of the statute in which they are found, and the nature of the subject regulated. *New York Central Securities Corporation* v. *United States,* 287 U. S. 12, 24, 25; *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.,* 289 U. S. 266, 285. In the *Radio* case, the requirement that the Commission act "as public convenience, interest, or necessity requires" was deemed a sufficient criterion because it was (p. 285):

> to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services, and, where an equitable adjustment between

> States is in view, by the relative advantages in service which will be enjoyed by the public through the distribution of facilities.

Similarly, the words "fair competition" in the Recovery Act must be construed in the light of the policies set forth in Section 1 and given expression in other sections of the Act. In this context the words "fair competition" have just as definite although not the same meaning as the phrase "unfair methods of competition" in the Federal Trade Commission Act, in which Act there are no other provisions calculated to fix more precisely the meaning of the phrase.

If the powers granted the Executive by the Recovery Act seem extensive it must be borne in mind that the subject matter with which the Act deals is extensive and complex. It is precisely the magnitude of the problem which makes a broad delegation necessary. It is submitted that no constitutional provision, no decision of this Court, and no accepted political theory or social policy stands in the way of the validity of the present delegation.

IV

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE AUTHORIZED BY THE RECOVERY ACT

The only provisions of the petroleum code before this Court are those which declare that production in excess of State quotas, fixed in conformity with the code provisions,[87] shall be deemed an unfair trade practice and a violation of the code. It is submitted that the language of the Recovery Act, its contemporaneous and consistent administrative construction, and the subsequent implied approval of such construction by Congress, show that these code provisions are authorized by the Act.

Section 3 (a) of the Act authorizes the President to approve codes of "fair competition." Certainly prohibition of production which is in violation of State law tends to promote the fairness of competition. The words, "unfair methods of competition", in Section 5 of the Federal Trade Commission Act have been held by this Court to cover a practice which, although not within the reach of the criminal law, is "of the sort which the common law and criminal statutes have long deemed contrary to public policy." *Federal Trade Commission* v. *Keppel & Bro., Inc.,* 291 U. S. 304, 313. *A fortiori,* under the broader scope to be attributed to the words "codes of fair competition" in the Recovery Act, and where the practice prohibited is not merely contrary to public policy but is illegal, prohibition of the practice is within the provisions of the Recovery Act permitting promulgation of codes of "fair" competition.

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[87] As previously stated, the code in article III, sections 3 and 4, prohibits production in excess of State quotas where a Federal agency has estimated the production of crude oil required to balance consumer demand and has allocated such required production equitably among the States, and a State has subdivided the production so allocated to it into pool, lease, or well quotas.

If the matter were otherwise doubtful, the fact that the President, his administrative agents, and a representative part of the petroleum industry have concurred in determining that production of oil in excess of State quota is an "unfair" practice, is entitled to great weight. This Court has said that it would hesitate to reject the administrative determination of the Federal Trade Commission that a particular method of competition is unfair. *Federal Trade Commission* v. *Keppel & Bro., Inc., supra,* p. 314.

It is submitted that the provisions of the petroleum code here in question concern not only practices which are "unfair" but also "competition" as that word is used in Section 3 (a). The competition of industrial concerns is not confined to the field of marketing, distribution, and sales, but extends or may extend to every step in the industrial process, including the purchase or other acquisition of raw materials. Due to the peculiar geological and legal factors governing the production of oil (*supra,* pp. 61–66), there is the most intense competition between producers of oil; each producer is in competition with every other near-by producer to obtain for himself the largest possible share of the limited supply of this fugitive product. In this competition the "hot" oil producer has a great advantage over his law-abiding competitor (*supra,* pp. 88–90).

Not only is there, in fact, competition in production, at least in the oil industry, but the provisions of the Recovery Act show that codes of fair competition were intended to permit regulation of production. Section 7 (a) provides that every such code shall contain the condition that "employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President." Section 4 (b)[88] provides that whenever the President shall find that destructive wage cutting is being practiced in an industry, he may, as to such industry, require a license of every person carrying on any business in or affecting interstate or foreign commerce. These wage and hour provisions are stated in general terms and necessarily apply to all employees, whether engaged in production, distribution, or marketing. This shows that codes may embrace competitive practices within the field of production.

It should also be noted that Section 3 (a) permits the President to approve a code of fair competition only if he finds that it "will tend to effectuate the policy" of Title I of the Act. In Section 1 of Title I Congress declares it to be its policy, *inter alia,* "to conserve natural resources." Since codes are the medium through which the policies declared in Section 1 are to be carried into effect, and since unregulated or illegal production of oil unquestionably wastes and dissipates the nation's oil resources (*supra*, pp. 136–138), prohibition of "hot oil" production in a code regulating fair competition in the oil industry is clearly designed to carry out the purposes of Congress, as expressed in the Act.

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[88] This section by its terms expired one year after the date of the enactment of the Act, i. e., June 16, 1934.

Section 1 also declares it to be the policy of Congress "to avoid undue restriction of production (except as may be temporarily required)". This indicates that Congress viewed restriction of production as within the ambit of codes of fair competition, provided such restriction either was not "undue" or was "temporarily required".[89] The code provision here in question cannot be said to be unduly restrictive and the conditions brought about by the potential flush production in the East Texas field temporarily require some measure of production control.

The consistent administrative construction of the Act also leads to the conclusion that code provisions regulating production are authorized by the statute. The first code approved under the Act, that for the cotton textile industry, provides that employers in that industry shall not operate "productive machinery" for more than two shifts of 40 hours each per week. Since then more than 50 codes have been approved which authorize some measure of control of production.[90] This Court has said that when the meaning of a statute is indefinite or doubtful, "administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons", and that such practice "has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion." *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315.

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[89] The President in his message to Congress of May 17, 1933, recommending the passage of the Recovery Act, said (H. Rept. No. 159, 73d Cong., 1st Sess., p. 1):

> My first request is that the Congress provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and *disastrous overproduction.* (Italics ours.)

Finally, it would appear that Congress has, in effect, ratified the restriction of production contained in the oil code. Sections 604 and 605 of the Revenue Act of 1934 (c. 277, 48 Stat. 766–767) levy an excise tax upon the sale of crude oil by the producer and upon the refining or processing of crude oil. Section 604 requires producers to keep such records and make such reports covering production and sale of crude oil as shall be prescribed by regulations promulgated by the Commissioner of Internal Revenue. The section makes these records and reports open to inspection by any agency of the United States or of any State having regulatory power over the production of oil. While the primary purpose of Congress in enacting these sections was to provide revenue, a secondary purpose was to assist Federal and State officers in enforcing laws (including the code) regulating the production of oil.[91] When, therefore, it appears that these revenue provisions were intentionally framed so as to aid in enforcing the provisions of the oil code which restrict production, Congress may be regarded as having impliedly declared that it believed that these provisions were authorized by the Recovery Act. The situation is analogous to the reenactment of a statute with knowledge by Congress of its prior administrative interpretation. Such reenactment is held to indicate legislative approval of the statute as administered. *McCaughn* v. *Hershey Chocolate Co.,* 283 U. S. 488, 492–493; *Massachusetts Mutual Life Ins. Co.* v. *United States,* 288 U. S. 269, 273.

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[90] This number does not include codes which authorize limitation upon increases in plant capacity. The commonest form of control of production authorized by approved codes is a limitation upon hours of operation of machines or plants, but a few codes, like the petroleum code, authorize limitation of production upon a quota basis. Codes authorizing limitation of production are listed in Appendix B, pp. 182–184.

V

SECTION 9 (C) OF THE RECOVERY ACT IS CONSTITUTIONAL

A. Section 9 (c) is within the commerce power of Congress

Section 9 (c) authorizes the President to prohibit the transportation in interstate and foreign commerce of petroleum and its products produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order thereunder. This section is within the commerce power of Congress. It regulates commerce itself—the movement of oil across State lines or to foreign countries. Since it prohibits only the transportation of oil produced or withdrawn from storage in violation of State law, it does not constitute an attempt to exert the commerce power so as to thwart or control the internal policy of the several States. The court below, in its opinion in the *Amazon* case, said (R. 185):

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[91] H. Rep. No. 704, 73d Cong., 2nd Sess., pp. 41–42; Hearings, H. R. 7835, Senate Committee on Finance, 73d Cong., 2nd Sess. (Confidential), pp. 121–126; Cong. Rec., vol. 78, pt. 3, p. 3057.

> Such cooperation between state and central government is not Constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate.

Prohibition of the use of interstate commerce as an instrumentality for the promotion of violation of State laws, or for the furtherance of injurious or harmful results, has been consistently upheld. When certain States, exercising their general police power, sought to control the transportation and sale of intoxicating liquors within their borders, Congress first made such liquors subject to State laws on arrival, and later made it illegal to transport them into such a State. *In re Rahrer,* 140 U. S. 545; *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311.[92] This Court has sustained laws prohibiting the interstate transportation of diseased cattle (*Thornton* v. *United States,* 271 U. S. 414); lottery tickets (*Champion* v. *Ames,* 188 U. S. 321); adulterated articles likely to deceive or injure purchasers (*Hipolite Egg Co.* v. *United States,* 220 U. S. 45); women for immoral ends, whether for commercial purposes or otherwise (*Hoke* v. *United States,* 227 U. S. 308; *Caminetti* v. *United States,* 242 U. S. 470); prize-fight films (*Weber* v. *Freed,* 239 U. S. 325); goods with misleading labels (*Seven Cases* v. *United States,* 239

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[92] These cases clearly indicate, contrary to petitioner's contention in the *Panama* case, that the commerce clause does not require uniformity in its application throughout the country. See also *Cooley* v. *Board of Port Wardens,* 12 How. 299, 319. These cases also dispose of a similar contention that the regulations are invalid because not uniform in that they do not apply to producers and refiners throughout all producing areas in the country.

U. S. 510); and stolen automobiles (*Brooks* v. *United States,* 267 U. S. 432). See also *Rupert* v. *United States,* 181 Fed. 87 (C. C. A. 8th), holding valid an Act of Congress prohibiting transportation *out of* the State of wild game killed in violation of State law.

Petitioners rely upon *Hammer* v. *Dagenhart,* 247 U. S. 251, *supra,* which held invalid an Act of Congress prohibiting interstate transportation of any products of a mine or factory in which, during the preceding 30 days, children of less than certain ages had been permitted to work. The decision appears to be based upon two grounds, (1) that the transportation which was barred was not necessary to the accomplishment of "harmful results" to people of other States and (2) that the necessary effect of the statute was to take from the States the power to control child labor in mines and factories.

It is submitted that Section 9 (c) is distinguishable upon both grounds. As to the latter, it has already been pointed out that Section 9 (c) does not operate to usurp State control over production; on the contrary, it strengthens and aids such control. As to the former, the prohibited transportation directly contributes to harmful results in the States of destination, because oil produced in excess of State quotas is offered for sale below the price of legal oil (No. 260, R. 85, 97, 102–103, 109–110, 120; oN. 135, R. 57–58; pp. 88–90, *supra*), and either causes the "legal" producer or refiner to lower his price in interstate sales or diverts his interstate business to his "illegal" competitor.

Moreover, *Brooks* v. *United States,* 267 U. S. 432, indicates that interstate transportation may be prohibited under the commerce clause if the prohibited commerce contributes to harmful results in the State of origin. That case upheld the validity of the provisions of the National Motor Vehicle Theft Act making it a crime to transport in interstate commerce a motor vehicle, knowing that it had been stolen. The fact that interstate transportation facilitated escape from detection and punishment, and thereby promoted the local crime of larceny and the individual property losses incident thereto, appears to have been one of the grounds which this Court viewed as justifying the exertion of Federal power in the statute there under consideration. The Court said (pp. 438–439):

> The quick passage of the machines into another State helps to conceal the trail of the thieves, gets the stolen property into another police jurisdiction and facilitates the finding of a safer place in which to dispose of the booty at a good price. This is a gross misuse of interstate commerce. Congress may properly punish such interstate transportation by any one with knowledge of the theft, because of its harmful result and its defeat of the property rights of those whose machines against their will are taken into other jurisdictions.

The transportation prohibited by Section 9 (c) directly contributes to harmful results in the State of origin, by providing an interstate market for oil illegally produced or withdrawn from storage. The prohibitions of that section are therefore designed, similarly to the National Motor Vehicle Theft Act, to prevent a "gross misuse" of interstate commerce; to prohibit the use of the channels of commerce as a means of profiting by illegal activity and of extending its effect into other States; and to preserve property rights threatened by illegal or criminal action.

B. Section 9 (c) is not an unconstitutional delegation of legislative authority

The question of delegation arising under Section 9 (c) is much narrower than that previously discussed (*supra,* pp. 144–155) involved in the approval of codes under Section 3 (a). The kind of transportation which Section 9 (c) authorizes the President to prohibit is explicitly set forth and he is given no discretionary power as to the scope of the prohibition. His discretion is limited to determining when the prohibition shall take effect.

Delegations of this character have been uniformly held to be valid. In *Hampton & Co.* v. *United States,* 276 U. S. 394, *supra,* this Court, in sustaining such a delegation, said (p. 407):

> Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future condi-

> tions, and it may leave the determination of such time to the decision of an Executive * * *.

The law upheld in *Field* v. *Clark,* 143 U. S. 649, and the numerous statutes reviewed in the Court's opinion (pp. 682–692) were of this character. The Tariff Act there sustained authorized the President to remove certain goods from the free list "for such time as he shall deem just", in order to protect American goods against unreasonable or discriminatory duties by foreign countries. In *Interstate Commerce Commission* v. *Goodrich Transit Company,* 224 U. S. 194, the delegation sustained was considerably broader in scope. The Interstate Commerce Commission was authorized to determine both the time when the carriers should be required to maintain a uniform system of accounts and the form in which such accounts should be kept.

The general policies and purposes of the Recovery Act, of which Section 9 (c) is an integral part, govern the President's determination of the time or times during which the prohibition against transportation of hot oil shall be applied. Among those policies and purposes declared in Section 1 of the Act are the conservation of "natural resources", elimination of "unfair competitive practices" and the removal of "obstructions to the free flow of interstate and foreign commerce." The only matter committed to the President is the application of these policies and purposes to the particular conditions pertinent to the question of Federal prohibition of interstate transportation of "hot" oil. While Congress might have considered an outright prohibition desirable, it was undoubtedly justified in concluding that the situation called for some degree of flexibility and that the Executive was in a better position than Congress to determine when the prohibition should go into effect or should terminate. For example, if a code for the oil industry adopted under Section 3 (a) should provide for and effectuate a balanced and workable control of overproduction of oil and its interstate transportation, or if there should be an unexpected decrease in the production of the more important flush fields, it might well be desirable to allow the particular type of prohibition authorized by Section 9 (c) to remain dormant or to be discontinued after having once been put into operation.

It is submitted that the policies set forth in Section 1 of the Act apply to Section 9 (c) and provide ample guidance for the administration of the narrowly limited powers there granted.

Petitioners in the *Panama* case contend that Section 9 (c) is an invalid delegation of legislative power in that criminal liability thereunder does not arise until the issuance of an order by the President. A similar contention is made with respect to Section 10 (a) of the Act which authorizes the promulgation of rules and regulations and makes violation thereof a crime. That Congress may make it a crime to violate an administrative order or regulation is clear from the authorities. *Avent* v. *United States,* 266 U. S. 127; *United States* v. *Grimaud,* 220 U. S. 506; *Union Bridge Co.* v. *United States,* 204 U. S. 364; *In re Kollock,* 165 U. S. 526; *Caha* v. *United States,* 152 U. S. 211.

Petitioners in the *Panama* case further contend that Section 9 (c) is invalid as a delegation to the states since it is operative only as to oil produced in violation of state law. The decisions of this Court establish that it does not constitute an invalid delegation of power to predicate a Federal offense upon a violation of state law. *In re Rahrer, supra; Clark Distilling Company* v. *Western Maryland Ry. Co., supra; Ex Parte Siebold,* 100 U. S. 371; *Cooley* v. *Board of Port Wardens,* 12 How. 299.

VI

THE REGULATIONS HERE IN QUESTION ARE IN ALL RESPECTS VALID AND CONSTITUTIONAL

A. The requirement of periodic reports from producers and refiners and the maintenance of books open to inspection is authorized by Section 10 (a) of the Recovery Act as necessary for the enforcement of Section 9 (c) of the Act

The regulations have been described in the statement, *supra,* pp. 16–18. They were issued pursuant to Section 10 (a)[93] of the Recovery Act, which authorizes the promulgation of such rules and regulations as may be necessary to carry out the purposes of Title I of the Act. They were designed to make effective the prohibition contained in Section 9 (c) of the transportation in interstate and foreign commerce of oil or its products produced in violation of state laws. The specific regulations involved in these cases require the filing of monthly reports by all producers (Reg. IV) and refiners (Reg. V)[94] and the maintenance by them of books and records open to inspection covering all transactions involving the production and transportation of petroleum and the products thereof (Reg. VII). All three regulations are at issue in the *Panama* case, and Regulations IV and VII in the *Amazon* case.

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[93] Petitioners in the *Panama* case base their argument that the Regulations are not authorized by the Act on the mistaken assumption that the regulations were issued under Section 9 (c) alone. Their basis was, in fact, Section 10 (a), which expressly authorizes the promulgation of regulations.

The principal issue raised with respect to the validity of these regulations is as to whether they are necessary to the enforcement of Section 9 (c). The Secretary of the Interior, in promulgating them, made the following finding as to their necessity:

> Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving

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[94] As previously stated (*supra*, p. 16), Regulation V was suspended except in the East Texas and Oklahoma City areas, and Regulation IV was suspended excepting in states which require monthly producers' reports. Texas is one of the states requiring monthly producers' reports.

> in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public, No. 67, 73d Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases, and shipments are in interstate and foreign commerce or in intrastate commerce (Reg. III, Appendix A, *infra*, p. 221).

Such a finding by the administrative official charged with the enforcement of the statute is entitled to great weight, and his construction of the statute as permitting such regulations "will not be overruled except for weighty reasons." *Fawcus Machine Co.* v. *United States,* 282 U. S. 375, 378. See also *Brewster* v. *Gage,* 280 U. S. 327, 336; *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315; *Boske* v. *Comingore,* 177 U. S. 459, 470.

The necessity of the regulations here in question, as applied to these petitioners, will clearly appear from a consideration of the difficulties of enforcement confronting the Government in the East Texas field.

(1) *It is essential to enforcement of Section 9 (c) that a system of reports be imposed.*

The very size and complexity of the East Texas field defies any attempt on the part of the Government to detect and prevent interstate shipment of illegal petroleum and of illegal petroleum products through ordinary policing methods.

The developed area of the East Texas oil field is of enormous extent, comprising approximately 116,000 acres (Oil Weekly, Feb. 26, 1934, (Reistle, East Texas Production), p. 14) underlying a tract which is 35 miles long and from 3 to 7½ miles in breadth (Federal Oil Conservation Board, Report V (1932), p. 42). Present average well spacing is approximately one well to 9.5 acres (Reistle, *supra*), and there are approximately 15,000 wells in the field (Production and Storage Report for the East Texas Field, Railroad Commission of Texas, Sept. 1934, p. 4, Appendix B, p. 179). The field is divided into more than 3,000 separate lease tracts operated by approximately 1,900 different producers. (Production and Storage Report for the East Texas Field, Railroad Commission of Texas, Feb. 1934, p. 7.) Each well in the field has a separate daily allowable production computed on the basis of a uniform percentage of each well's hourly potential producing capacity as fixed by orders of the Railroad Commission of Texas.

The individual wells are connected directly to storage tanks upon the leases where they are located, several wells usually flowing into a single tank or battery of tanks.[95] In the same lease tanks there is usually a certain quantity of storage oil in addition to the current production. For example, on the first day of October 1934 there was in storage on leases in the East Texas field 1,394,856 barrels of crude petroleum. (Production and Storage Report for the East Texas Field, Railroad Commission of Texas, Sept. 1934, p. 3, Appendix B, p. 178.)

From the individual leases the oil is customarily gathered through what are known as "gathering systems." (See Sen. Doc. No. 61, 70th Cong., 1st Sess. (Federal Trade Commission, Report on Petroleum Industry, Prices, Profits and Competition), pp. 99–100, Appendix B, p. 10.) In the East Texas field there are some 40 independently operated gathering systems (Production and Storage Report for the East Texas Oil Field, Texas Railroad Commission, Feb. 1934, p. 6) in addition to some gathering lines operated purely as plant facilities by the local refiners, and in addition to the gathering systems operated as adjuncts to the major pipe lines which transport petroleum from the field (*id.* p. 2). Immediately upon its entrance into a gathering system, the crude petroleum produced from any lease becomes intermingled with other petroleum gathered by the system from other leases; and it is further intermingled with oil from other sources upon delivery into trunk pipe lines for transportation out of the field, or delivery to the storage tanks of local refineries, or of some loading rack operator adjacent to a railroad right-of-way for rail shipment, or upon delivery to some other gathering system. Thus, in the gathering systems there is a continuous concealed movement of oil from place to place and from gathering system to gathering system within the field, which thoroughly confuses the source from which the petroleum was produced and the destination to which it is to be shipped. Storage oil is necessarily intermingled with current production, allowable production with excess production, and oil from each well with oil from hundreds of other wells.

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[95] See Lilley, The Oil Industry (1925), pp. 197–198; United States Bureau of Mines, Applied Methods and Equipment for Reducing Evaporation Losses of Petroleum and Gasoline (Bulletin 379, 1934) p. 44.

The petroleum leaves the field through three major outlets. Approximately 90% of the crude produced in the field is transported by the trunk pipe lines which carry it to Louisiana, to the Gulf Coast for refining or coastwise movement, and to the Mid-Continent Area (No. 260, R. 116–117). Approximately 10% is refined in the refineries located in the field, and leaves the field in the form of refined products (No. 260, R. 116–117). An almost negligible quantity of crude oil leaves the field through the medium of tank-car shipments over the railroads. See Production and Storage Report for the East Texas Field, Railroad Commission of Texas, for September 1934, Appendix B, p. 181.

An attempt to obtain the information necessary to prevent the interstate movement of illegal petroleum and its products through the medium of inspectors and investigators would be fore-doomed to failure. A body of law-enforcing officers watching the movement of oil and products from Texas through investigation of the three outlets described above could accomplish nothing in view of the fact that petroleum from various sources is commingled and bears no marks showing the source from which it comes or the legality or illegality of its production (No. 135, R. 58, 66–67; No. 260, R. 113). If this force of law officers were expanded so that all gathering systems leading to these three outlets could be constantly watched and their deliveries checked, information might be obtained as to the leases of origin, but no information would be available as to the day or days on which the oil was produced or the particular well or wells from which it came, which information is essential to the determination of the legality or illegality of the production. Therefore, this force of investigators would have to be expanded further in order to place men upon each lease to watch the daily production from the individual wells and to make constant gauges of the lease storage.

Such a system of enforcement would necessitate a force of approximately 25,000 men (No. 135, R. 66; No. 260, R. 119), but even such a body of men would, as a practical matter, find it almost impossible to check accurately the legality or illegality of the production throughout the field and to trace the oil produced through its ramifications of transportation and refining until it reached the stage of interstate shipment (No. 135, R. 58, 67; No. 260, R. 120). Not only does the complicated nature of the legitimate movement of oil prevent this being done accurately, but also additional difficulties are being constantly interposed by operators of wells, pipe lines, and refineries who seek to conceal their operations. A common practice adopted by producers who are engaged in withdrawing more than their legal allowable is to install secret pipe connections which conduct the oil from the lease in a manner to defeat detection. Devices of this type are known as "by-passes" and have found extensive use in the East Texas field (No. 135, R. 98–101, 125, 126, 128). Lease tanks are frequently allowed to flow into gathering systems at the same time that wells are flowing into the lease tanks, thus defeating any attempt to gauge the petroleum being produced (No. 135, R. 61, 126–127; No. 260, R. 121, 124). Other devices such as reverse valves, which appear to be locked closed when in reality they are open; running crude oil into pits usually used for waste oil whence it is recovered as crude oil (Oil and Gas Journal, Feb. 1, 1934 (Bredberg, Doom of East Texas Hot Oil Producers Sounded by Latest Federal Activity), p. 32) and concealing in inaccessible locations the valves on the main line running from the wells (National Petroleum News, Mar. 21, 1934 (Smith, The Panorama of Petroleum in the Mid-Continent), p. 31, 32) are utilized. It cannot be expected that inspections of the physical properties can uncover all of these practices.

It is apparent, therefore, that it is impossible to identify and prevent the shipment of illegal petroleum and the products obtained therefrom through a policing system, however thorough. The information necessary to identify and prevent such shipment can, as a practical matter, only be obtained from those actually engaged in producing, shipping, refining or transporting petroleum and its products, and the only known reasonable and effective method of obtaining such information from them is by a system of periodic reports. No evidence was submitted by the complainants in either of these cases that such a reporting system was not reasonable and necessary for the enforcement of Section 9 (c). On the other hand, a large number of experienced oil producers and refiners testified that such a reporting system was both reasonable and necessary (No. 135, R. 58, 61, 62, 63, 65, 66, 67; No. 260, R. 86–88, 103, 119, 120, 122, 123, 124).

(2) *Periodic reports from all producers are necessary for the enforcement of Section 9 (c).*

In order to detect interstate movements of illegally produced petroleum and its products it is necessary first to identify the petroleum as legal or illegal and then to trace its movement into interstate commerce. The only persons who can report as of their own knowledge as to the legality of their production are the producers themselves, since certain of the facts essential in determining legality of production are known to them alone. Gathering systems, pipe lines and refineries may know the total amounts of oil which they receive from particular leases, but no one except the producers who turn the valves on the lines connecting their wells with the lease tanks on their leases can possibly have knowledge of the day by day production and of the particular wells which actually supply the contents of the lease tanks from which deliveries are made. These facts must be known, since the proration orders of the Railroad Commission of Texas prescribe *daily* allowables and impose the restrictions upon *individual wells.* Moreover, only the producers are able to report whether or not oil from the same lease is being delivered at the same time through more than one connection (No. 135, R. 103). It is apparent, therefore, that an adequate system of reports must include reports from the producers themselves.

Any contention that reports are necessary only from those producers whose oil or its products moves eventually into interstate commerce is manifestly untenable. Producers cannot ordinarily know either the immediate or ultimate destination of the oil which they themselves produce. There is an intricate, interconnected network of gathering systems and pipe lines in the field into which the oil flows and from which it may be delivered to a large number of different points within and without the field. (No. 135, R. 58, 61, 66–67, 98–101; No. 260, R. 120, 124.) Moreover, the producers ordinarily have no control over the movement of oil after it has been removed from their lease tanks, since in the usual course of business they sell and surrender possession of their oil immediately upon delivery from these tanks. (No. 260, R. 72, 74; See Federal Trade Commission, Report on Petroleum Industry, etc., *supra*, pp. 99–101, Appendix B, p. 10.)

As a matter of fact, 85% of the oil produced in the field moves ultimately into interstate commerce in the form of crude or its products (No. 260, R. 117). Furthermore, every well in the field contributes to this stream of interstate commerce to some degree, because of the fact that all oil gathered by the gathering systems and moving to refineries or trunk pipe lines is, during the process of gathering, refining and transportation, inextricably intermixed (No. 260, R. 79–80, 84; No. 135, R. 103). Approximately 90% of the crude from the field leaves the field in the trunk pipe lines in which it is either being transported into interstate commerce or is commingled with other oil which is being so transported (No. 260, R. 114, 117). Practically all of the balance of crude produced in the field moves to local refineries which transport approximately

60% of the products manufactured by them into interstate commerce (No. 260, R. 117, 110).

(3) *Periodic reports from all refiners are also necessary for the enforcement of Section 9* (*c*).

Although a system of periodic reports from all producers supplemented by inspections and investigations will disclose the essential facts concerning production, it is not a sufficient source of information to enable the Government to enforce the prohibition against the interstate shipment of illegal petroleum and the products thereof. As was pointed out above, the producers are not in a position to report the destination to which their oil will move, since its movement is not ordinarily under their control from the moment that it is transferred from the lease tanks to the gathering lines. It is therefore necessary that the producers' reports be supplemented by information concerning the course of transit of oil from the time it leaves the wells until it reaches an interstate carrier.

In the cases now before this Court only reports from producers and refiners are directly involved, but the system of reports in effect at the time these cases were instituted (see No. 135, R. 9–20; No. 260, R. 39–53), as well as at the present time, constitutes a comprehensive method of tracing movements of oil throughout the entire course of its transportation within and from the field. As a part of this system it is essential that all refiners make periodic reports since they alone are in a position to inform the Government from whom they obtained their petroleum and to whom they delivered the petroleum in its crude form or as products. The need for this information is clear as to those refiners, such as the complainants in the *Panama* case, which ship a portion of their products in interstate commerce (No. 135, R. 2, 67–97, 105–119), for as to them knowledge of their interstate shipments and of the source of their petroleum is absolutely essential in order to determine whether Section 9 (c) has been or is likely to be violated. It is not believed that there are any refineries in the East Texas field which ship all of their products solely within the State. Petitioners offered no evidence of the existence of any such refineries. Even if there were such refineries in the field, it would, nevertheless, be essential to discover from them whether or not they have transferred any of their crude petroleum or petroleum products to other refineries for refining or re-refining, since the refineries in the field are interconnected by an intricate system of pipe lines through which they may exchange both crude petroleum and petroleum products (No. 135, R. 61, 127, 100; No. 260, R. 121, 124). It is essential to know the intrastate destination of crude or products shipped by refineries located in the field, so that in case of subsequent interstate shipments of such crude or products a record of the source of origin of such shipments will exist. In order to trace the line of movement from the well to the interstate carrier, it is thus essential to have reports on receipts and deliveries from every refinery in the field.

Reports from the refineries in the East Texas field are particularly necessary since they constitute the principal outlet for illegal petroleum from the field (No. 135, R. 67, 104, 129). Many of them exist merely for the purpose of disposing of crude oil (No. 135, R. 104). Nearly all own pipe line and gathering systems (No. 135, R. 61, 126; No. 260, R. 121, 124), and many also own wells (No. 135, R. 61; No. 260, R. 124, 127). Oil flows from leases in the field to these refineries through an intricate network of pipe lines (No. 135, R. 61, 98–101, 127; No. 260, R. 121, 124). The small pipe lines which run to the refineries are so interconnected that oil can be delivered from practically any point in the field to these refineries and from one refinery to another (No. 135, R. 61, 127; No. 260, R. 121, 124). The evidence established the existence of a large number of "by-passes" or illegal connections from wells to refineries, including the Panama Refining Company, petitioner in No. 135, and several of the complainant refiners in the causes which were consolidated with the *Panama* case (No. 135, R. 98–101, 124–125). Many of the refineries do not use seals on the lock-stops on the tank batteries located on the leases from which they receive oil, with the result that the lock-stops can be opened at will so as to permit oil to flow from the lease to the refineries at the same time that it is flowing into the lease tanks, thus defeating any attempt to ascertain the amount of oil flowing from wells on these leases (No. 135, R. 61, 126–127; No. 260, R. 121, 124).

Periodic reports from producers and refiners and also from pipe lines and gathering systems not only disclose the source and course of transit followed by petroleum within and from the field but also serve to provide a cross-check of the truth and accuracy of all of the reports. Whereas any single person might be able to deceive inspectors and to falsify his records and reports, if his operations were examined separately, it is more difficult for him to avoid detection when all of the persons from whom he is receiving and to whom he is delivering petroleum or petroleum products are also required to report. A thorough system of sworn reports properly audited requires collusion between all persons handling the oil from the time of production until it eventually leaves the field, in order successfully to conceal illegal operations.

(4) *Inspection of books and records to supplement the reporting system is essential to the enforcement of Section 9 (c).*

In order to check the accuracy of the reports of producers, refiners and others it is essential that they be required to keep records of their transactions available for inspection as provided in Regulation VII. While the books and records may also be kept inaccurately, it is much more difficult, as a practical matter, to eliminate from books and records all evidence disclosing the actual operations of a business. Thus inspection of books and records will often disclose the amount of payments made or received by individuals selling or purchasing crude oil or its products and will thereby furnish some check as to the accuracy of the quantity of crude or its products shown in the reports to have been delivered or received. Books and records will often disclose the real parties in interest from whom crude or its products has been purchased or to whom it has been sold. Such facts may easily be concealed in the reports by the use of fictitious names.

What has previously been stated as to the utility of a complete reporting system in furnishing a cross-check as to the accuracy of all reports is equally applicable to the requirement of the maintenance of books available for inspection. Such a requirement furnishes a check not only of the reports made by any particular person reporting, but also of the reports made of other persons with whom he has dealt.

In view of the ingenuity with which producers, refiners and others in the East Texas Field have sought to conceal illegal operations, a cross-check provided by a thorough reporting system supplemented by inspection of books and records cannot be said to be a needless precaution. Such a system not only serves to detect actual violations of Section 9 (c), but also to deter future violations. See

Bartlett Frazier Co. v. *Hyde,* 65 F. (2d) 350, 352 (C. C. A. 7th), certiorari denied, 290 U. S. 654. A person will be loath to violate the law when he is faced with the alternative either of disclosing his violation or of making a false statement under oath, the falsity of which may be detected.

As previously stated (*supra,* p. 177) no evidence was presented by the complainants in either case showing that the regulations were not necessary to the enforcement of Section 9 (c). The evidence offered by complainants bearing on the regulations consisted of testimony that agents of the Division of Investigations of the Department of the Interior had gauged the storage tanks on their leases (No. 135, R. 40–41, 42–43, 46, 48, 49, 51, 53; No. 260, R. 69, 72–73). There was also testimony by one of the complainants in the *Panama* case that on one occasion agents of the Division of Investigations had dug up and disconnected the flow line leading from one of his wells on the claim that it constituted a "by-pass" (No. 135, R. 40). Although the regulations did not authorize these acts,[96] we think it clear, as the court below stated, that even if such conduct constituted a trespass "there is no showing of irreparable damage or insolvency of the trespassers, and no occasion for an injunction on that account" (No. 135, R. 190; No. 260, R. 192).

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[96] The regulations recently promulgated provide for the inspection and examination of wells, pipes, flow lines, etc., and the gauging of tanks. See Appendix A, p. 224.

B. The regulations are neither unreasonable nor burdensome; they involve no infringement of the rights guaranteed to petitioners by the due process clause of the Fifth Amendment

We think it clear that what has been stated as to the necessity of reports and inspection also demonstrates that the regulations are reasonably adapted to attain the ends sought to be achieved by Section 9(c) of the Act and that they are not arbitrary or capricious. See *Bartlett Frazier Co.* v. *Hyde, supra,* p. 352.

No evidence was offered by petitioners that the regulations imposed any hardship or inconvenience. On behalf of the respondents a large number of persons engaged in the producing and refining branches of the industry, and who were themselves subject to these very regulations, testified that the reports imposed no burden or inconvenience upon them (No. 135, R. 58, 62–63, 64, 65, 66; No. 260, R. 120, 122, 123, 125, 126). They require but a nominal amount of time for preparation (No. 135, R. 62, 65). They demand information which must be known to those reporting in the successful operation of their business (No. 135, R. 62, 130; No. 260, R. 118–19, 123, 125, 126) and in making State and Federal tax reports (No. 135, R. 130; No. 260, R. 118). The reports required from producers[97] are identical with those which they must file with the

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[97] At the present time refiners are also required to file reports with the Railroad Commission of Texas giving substantially the information required under the Federal regulations.

Railroad Commission of Texas (No. 135, R. 130; No. 260, R. 118, 123).

C. The regulations do not exeed the power of Congress under the commerce clause even though they apply to persons not engaged in interstate commerce

The power to regulate interstate commerce necessarily carries with it the power to make the control effective. Thus, if the regulations are necessary to the enforcement of Section 9 (c), a valid commerce statute, it follows that they are within the Federal commerce power.

Reports have been recognized as legitimate devices for aiding in the enforcement of other commerce laws. *Baltimore & Ohio Railroad* v. *Interstate Commerce Commission,* 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Company,* 224 U. S. 194; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 42; *Bartlett Frazier Co.* v. *Hyde, supra.*

As has previously been pointed out, reports from all producers and refiners are essential to the enforcement of Section 9 (c) (*supra,* pp. 177–183). Under these circumstances, reports from intrastate operators may be required as "necessary and proper for carrying into effect" the regulation of interstate commerce.[98] In the *Goodrich* case, *supra,* arising under the Interstate Commerce Act, and in the *Olsen* and *Bartlett Frazier Co.* cases, *supra,* under the Grain Futures Act, it has been held that reports of intrastate activities could be required where necessary to make the regulation of interstate commerce effective. In the *Goodrich* case the defendant was required to file reports as to an amusement park, as well as for its interstate business.

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[98] The general principles applicable to the control of intrastate activities under the commerce clause have been set forth above (pp. 44–47, 108–128, *supra*).

D. The regulations do not violate the constitutional prohibitions against unreasonable searches and seizures and compulsory self-incrimination

The prohibition against unreasonable searches and seizures in the Fourth Amendment and the privilege against self-incrimination embodied in the Fifth Amendment may conveniently be considered together. As this Court said in the famous *Boyd* case (116 U. S. 616, 630, 633), the two Amendments "run almost into each other" and "throw great light on each other."

The language of the Amendments demonstrates that they were not intended to prohibit regulations of the character here in question.

FOURTH AMENDMENT

> their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

It would seem clear from the wording of the Fifth Amendment that it applies only to a witness in a judicial or quasi judicial proceeding or investigation, not to such matters as the filing of reports or the keeping of records for inspection for regulatory purposes. *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541; *Hale* v. *Henkel*, 201 U. S. 43, 67; *Burdeau* v. *McDowell*, 256 U. S. 465, 475; *Counselman* v. *Hitchcock*, 142 U. S. 547; *Matter of Harris*, 221 U. S. 274.[99] The Amendment merely incorporates into our constitutional structure a rule of evidence.

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[99] *Counselman* v. *Hitchcock*, 142 U. S. 547, 562: "The object [of the Amendment] was to insure that a person should not be compelled, *when acting as a witness in any investigation*, to give testimony which might tend to show that he himself had committed a crime." *Hale* v. *Henkel*, 201 U. S. 43, 67: "The interdiction of the Fifth Amendment operates only where a witness is asked to incriminate himself—in other words, *to give testimony* which may possibly expose him to a criminal charge." *Burdeau* v. *McDowell*, 256 U. S. 465, 475: "The Fifth Amendment, *as its terms import*, is intended to secure the citizen from compulsory *testimony* against himself. It protects from extorted confessions, or examinations *in court proceedings* by compulsory methods." (Italics supplied.)

The privilege in any event cannot apply to the corporate petitioners. *Hale* v. *Henkel*, 201 U. S. 43; *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322; *Wilson* v. *United States*, 221 U. S. 361; *Essgee Co.* v. *United States*, 262 U. S. 151.

The Fourth Amendment denounces "unreasonable searches and seizures." *Carroll* v. *United States,* 267 U. S. 132, 147. The compulsory filing of reports is obviously neither a "search" nor a "seizure." Nor can the inspection of records be regarded as a "seizure." The inspection might be deemed a "search"—but examination of specific business records required by law to be kept would clearly not be an "unreasonable" search within the accepted meaning of the word. See *Olmstead* v. *United States,* 277 U. S. 438, 464: *Carroll* v. *United States, supra,* p. 147.

In the *Olmstead* case the Court described the scope of the Fourth Amendment as follows (p. 466):

> Neither the cases we have cited nor any of the many federal decisions brought to our attention hold the Fourth Amendment to have been violated as against a defendant unless there has been an official search and seizure of his person, or such a seizure of his papers or his tangible material effects, or an actual physical invasion of his house "or curtilage" for the purpose of making a seizure.

The history of the Amendments indicates that their purpose was the prevention of unreasonably violent enforcement of the criminal law. See *Weeks* v. *United States,* 232 U. S. 383, 390, and *Twining* v. *New Jersey,* 211 U. S. 78, 102. In no case has it been held that [redacted] they limited the power of Congress to require reports and the keeping of business records open to inspection as an incident to the enforcement of a valid regulatory statute.[100] Such provisions have uniformly been sustained by this Court, and with a minimum of discussion. See *Flint* v. *Stone Tracy Co.,* 220 U. S. 107; *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; *United States* v. *Katz,* 271 U. S. 354. See also *Bartlett Frazier Co.* v. *Hyde,* 65 F. (2d) 350 (C. C. A. 7th), certiorari denied, 290 U. S. 654.

Petitioners' contention that the provision for the filing of reports and inspection of books violates the Fifth Amendment, because the reports and inspections may furnish evidence that the person subject to these requirements has violated Section 9 (c) of the Act is disposed of by these decisions. In all of them the disclosure of information would likewise have operated to reveal violations of law by the persons from whom information was compelled.

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[100] None of the cases in which the Amendments have been held to be violated involved this kind of statute. See *Boyd* v. *United States*, 116 U. S. 616; *Counselman* v. *Hitchcock*, 142 U. S. 547; *Weeks* v. *United States*, 232 U. S. 383; *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407; *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434; *Federal Trade Commission* v. *American Tobacco Company*, 264 U. S. 298. In the *Boyd* case, *supra*, the Court said (pp. 623–624):

> So, also, the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures.

These cases applied the Amendments to the use of evidentiary material in judicial and quasi judicial proceedings. In the *Harriman* and *American Tobacco Co.* cases, it was the unlimited scope of the demands for information which raised a question as to their validity.

Provisions similar to those of Regulation VII, that books must be kept subject to governmental inspection, were upheld in *Chicago Board of Trade* v. *Olsen, supra,* and *United States* v. *Katz, supra.* In *Bartlett Frazier Co.* v. *Hyde, supra,* which involved the validity of the provision for reports and inspections under the Grain Futures Act, the Circuit Court of Appeals stated (p. 351):

> Appellants invoke the Fourth Amendment as a shield against the requirement that they subject their books and records to the inspection of the Department, and the making of the reports. The Amendment, * * * cannot be applied to regulations which require reports and disclosures in respect to a business which is affected with a public interest, so far as such disclosures may be reasonably necessary for the due protection of the public. Were it otherwise, railroads and public utilities generally could not be required to make reports or to subject their records to inspection by agents of the government. Indeed, where public interest requires it, the right of visitation and

> disclosure has been extended even to business not charged with a public interest, as witness the taxing power, where the requirement of income reports and the right to inspect private books and papers have been definitely upheld.

The reports required from producers and refiners have other uses than the disclosure of violations of law by the persons reporting. As has previously been pointed out, reports from all producers and refiners are integral parts of a comprehensive reporting system which is essential in order that oil moving in interstate commerce may be traced to its source and the legality of its transportation determined. The reports of those complying with the law aid in detecting violations by others without, of course, in any way incriminating the former. It would hardly be feasible to require reports only from those who obey the law. Manifestly the reports and inspections provided for under the regulations here in question are not merely preliminary steps in the preparation of court action against the persons subject to them.

The validity of the regulations is supported not only by the decisions of this Court but by every sound consideration of policy. The need for reports and the inspection of records is much greater in the enforcement of a statute regulating business than in the enforcement of the traditional criminal law. And the burden on the citizen is neither heavy nor novel. "Pawnbrokers, express companies, liquor vendors, and many other kinds of businesses have long since been subject to just that sort of public scrutiny." *Karr* v. *Baldwin*, 57 F. (2d) 252, 255. The internal revenue regulations contain many similar provisions. The citizen unquestionably is entitled to a decent privacy in his personal affairs, but when he engages in business activities which may harm others, he may not properly insist upon concealing such activities from the Government.

CONCLUSION

It is submitted that:

1. The production-control provisions of the Petroleum Code are within the commerce power of Congress and do not violate the due process clause of the Fifth Amendment; that the authorization of the President in the Recovery Act to approve codes of fair competition is not an unconstitutional delegation of legislative power; and that the production-control provisions of the Petroleum Code are authorized by the Recovery Act.

2. Section 9 (c) of the Recovery Act is within the commerce power of Congress and does not invalidly delegate legislative power to the President.

3. The Regulations are authorized by the Recovery Act, are within the Federal commerce power, and do not violate the due process clause of the Fifth Amendment nor the constitutional guarantees against unreasonable searches and seizures and compulsory self-incrimination.

It is respectfully submitted, therefore, that the judgments below should be affirmed.

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APPENDIX A

1. Title I of the National Industrial Recovery Act, approved June 16, 1933, c. 90, 48 Stat. 195 (U. S .C. Sup. VII, Title 15, Secs. 701–710), reads as follows:

> **AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes**
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
>
> ## TITLE I—INDUSTRIAL RECOVERY
>
> ### DECLARATION OF POLICY
>
> SECTION 1. A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair

competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

ADMINISTRATIVE AGENCIES

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

CODES OF FAIR COMPETITION

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe.

Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

AGREEMENTS AND LICENSES

SEC. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

SEC. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

LIMITATIONS UPON APPLICATION OF TITLE

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

OIL REGULATION

SEC. 9. (a) The President is further authorized to initiate before the Interstate

Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipeline company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

RULES AND REGULATIONS

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

Title III, Section 303, of the National Industrial Recovery Act (U. S. C. Sup. VII, Title 15, Sec. 711), reads as follows:

SEPARABILITY CLAUSE

SEC. 303. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

2. Executive Orders relating to the Petroleum Code.

A. Executive Order approving Code.

EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

FRANKLIN D. ROOSEVELT.

Approval Recommended:

HUGH S. JOHNSON,
Administrator.

THE WHITE HOUSE, *August 19, 1933.*

B. Executive Order designating the Secretary of the Interior as Administrator of the Petroleum Code and the Department of the Interior as the Federal Agency.

EXECUTIVE ORDER

ADMINISTRATION OF THE PETROLEUM INDUSTRY

Pursuant to the authority vested in me by Section 2 (b) of Title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73d Congress), and in accordance with Section 2 of Article I and Section 1 (b) of Article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and appoint, for the petroleum industry, the Secretary of the Interior to be Administrator and the Department of the Interior to be the Federal Agency, as provided by the aforesaid Act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal Agency, by such Act and such Code of Fair Competition.

FRANKLIN D. ROOSEVELT.

The WHITE HOUSE,
Aug. 28, 1933.

3. Pertinent provisions of the Petroleum Code (as amended September 13, 1933, and September 25, 1934).

PREAMBLE

To meet the emergency in the petroleum industry; to increase employment, establish fair and adequate wages, enlarge the purchasing power of persons related to this industry and improve standards of labor; to conserve the Nation's petroleum resources and to prevent physical and economic wastes which demoralize the national market to the detriment of consumers and producers and to restrain and avoid recurring abuses in the production, transportation and marketing of petroleum and its products which directly obstruct the free flow of interstate and foreign commerce by causing abnormal and disturbing temporary fluctuations in the supply of petroleum or its products that are not responsive to actual demand and prices and disrupt the normal flow of interstate commerce in petroleum and its products; and to prevent the growth of monopoly resulting from unfair competitive practices; and to protect the Nation from an unnecessarily wasteful depletion of this natural resource essential for the national defense and safety and the continued functioning of the Nation's transportation facilities that are dependent for operation on an adequate and economic supply of petroleum and its products and to accomplish and effectuate the policies set forth in the National Industrial Recovery Act, this code of fair competition governing the petroleum industry is adopted.

ARTICLE III. PRODUCTION

SECTION 1. The President is hereby requested, after such investigation and hearing as is prescribed by, and subject to the limitations contained in, Title 1 of the National Industrial Recovery Act, to limit imports of crude petroleum and petroleum products for domestic consumption to volumes bearing such ratio to the estimated volume of domestic production as will effectuate the purposes of this Code and the National Industrial Recovery Act.

SECTION 2. Withdrawals of crude oil from storage shall be subject to approval by the Planning and Coordination Committee but for the remainder of 1933 shall be limited in the aggregate to an average not in excess of 100,000 barrels daily. Additions to storage beyond the necessary limits of fluctuations in working stocks shall be made only with the approval of the Planning and Coordinating Committee.

SECTION 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

SECTION 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or ARTICLE III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code.

SECTION 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State. If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code; and, further, persons engaged in the petroleum industry or any branch thereof in any State may adopt a supplemental code, for that State to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this code.

4. Allocations of Crude Oil Production among the Producing States.

A. Allocation for September, 1933.

ORDER UNDER CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY AS APPROVED BY THE PRESIDENT AUGUST 19 1933

Pursuant to the provisions of Sections 3 and 4 of Article III of the Code of Fair Competition for the Petroleum Industry approved by the President, August 19, 1933, under the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, the current estimate of required daily production of crude oil to balance consumer demand for petroleum products has been found by the Department of the Interior to be 2,409,700 barrels and the allocations among the several petroleum producing States are hereby certified to be as follows:

Arkansas	29, 000
California	480, 000
Kansas	111, 000
Louisiana	70, 000
Texas	975, 200
Oklahoma	540, 000
New Mexico	41, 400
Rocky Mountain States	38, 900
Appalachian States	94, 200
Michigan	30, 000
Total	2, 409, 700

The foregoing allocations shall be effective under the aforesaid Code of Fair Competition as of 7 a. m., September 8, 1933.

It is hereby ordered that in accordance with Section 2 of Article III of the aforesaid code, until further notice there shall be no net withdrawals from storage without the approval of the Planning and Coordination Committee and upon order of the Administrator.

It is hereby further ordered that in accordance with Section 1 of Article III of the aforesaid Code, until further notice, imports of crude petroleum and petroleum products shall be limited to an amount not exceeding the average daily imports of petroleum and petroleum products during the last six months of 1932.

Department of the Interior,
By Harold L. Ickes,
Secretary of the Interior.

September 2, 1933.

B. Allocation for October 1933.

ORDER UNDER CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY AS APPROVED BY THE PRESIDENT

Pursuant to the provisions of Sections 3 and 4 of Article III of the Code of Fair Competition for the Petroleum Industry approved by the President, August 19, 1933, under the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, and on the recommendation of the Petroleum Administrative Board and the facts submitted in support thereof, the current estimate of required daily production of crude oil to balance consumer demand for petroleum products has been found by the Department of the Interior to be 2,338,500 barrels, and the allocations among the several petroleum-producing States are hereby certified to be as follows:

Arkansas	33, 000
California	455, 000
Kansas	116, 000
Louisiana	70, 000
Texas	965, 000
Oklahoma	495, 000
New Mexico	41, 400
Rocky Mountain States	38, 900
Appalachian States	94, 200
Michigan	30, 000
Total	2, 338, 500

The foregoing allocations shall be effective under the aforesaid Code of Fair Competition as of 7 a. m., October 1, 1933.

It is hereby further ordered that in accordance with Section 2 of Article II of the aforesaid Code, until further notice, the following States may allocate part of their allowable to withdrawals from crude oil storage not to exceed the following amounts:

	Bbl. per day
Oklahoma	25, 000
Texas	40, 000
California	15, 000
Kansas	10, 000
Louisiana	5, 000

Such withdrawals from storage shall be assigned by the appropriate State regulatory body to such persons as have received permission from the Planning and Coordination Committee and the approval of the Petroleum Administrator to make the withdrawals.

It is hereby further ordered in accordance with Sections 3 and 4 of Article II of the aforesaid Code that excess production or withdrawals in any State during September shall be charged against the allowable of that State for October and the same policy rigorously adhered to during subsequent months.

It is hereby further ordered that in accordance with Section 1 of Article III of the aforesaid Code, until further notice, imports of crude petroleum and petroleum products shall be limited to an amount not exceeding the average daily imports of petroleum and petroleum products during the last six months of 1932.

HAROLD L. ICKES,
Petroleum Administrator.

SEPTEMBER 28, 1933.

5. Executive Orders under Section 9 (c) of the National Industrial Recovery Act.

A. Order Prohibiting Transportation of Oil Produced in Violation of State Law.

EXECUTIVE ORDER

PROHIBITION OF TRANSPORTATION IN INTERSTATE AND FOREIGN COMMERCE OF PETROLEUM AND THE PRODUCTS THEREOF UNLAWFULLY PRODUCED OR WITHDRAWN FROM STORAGE

By virtue of the authority vested in me by the Act of Congress entitled "AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, (Public No. 67, 73d Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 11, 1933.

[No. 6199]

B. Order Authorizing Secretary of the Interior to Issue Rules and Regulations under Section 9 (c).

EXECUTIVE ORDER

PROHIBITION OF TRANSPORTATION IN INTERSTATE AND FOREIGN COMMERCE OF PETROLEUM AND THE PRODUCTS THEREOF UNLAWFULLY PRODUCED OR WITHDRAWN FROM STORAGE

By virtue of the authority vested in me by the Act of Congress, entitled "AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933 (Public No. 67, 73d Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9 (c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 14, 1933.

[No. 6204]

6. Regulations and Orders Issued by the Secretary of the Interior under Sections 10 (a) and 9 (c) of the Recovery Act.

A. Regulations IV, V, and VII, as they read when these suits were instituted. (Order of July 15, 1933, as amended July 25, 1933, and August 21, 1933.)

REGULATION IV. Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post-office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.

(3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

REGULATION V. Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced.

(5) Such other detailed information, necessary to identify properly the source of the petroleum or its products received, as may

be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these rules and regulations.

Regulation VII. All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73d Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

B. Other Pertinent Regulations in the Order of July 15, 1933.

Regulation III. Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73d Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases, and shipments are in interstate and foreign commerce or in intrastate commerce.

Regulation X. These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, area, field, pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations may be by him at any time amended or changed in whole or in part.

C. Order of August 2, 1933, Suspending the Application of the Regulations in Certain Areas.

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

* * * * *

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers, and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

D. Pertinent Provisions in the Revised Regulations Issued July 20, 1934.

> By virtue of and pursuant to the authority vested in me by Sections 9 (c) and 10 (a) of Title I of the Act of Congress entitled "The National Industrial Recovery Act" approved June 16, 1933 (48 Stat. 195) and the executive orders of the President of the United States No. 6199 (July 11, 1933) and No. 6204 (July 14, 1933) issued pursuant to such legislation, the regulations and amendments thereto promulgated by me on July 15, 1933, July 25, 1933, August 2, 1933, August 21, 1933, April 6, 1934, and May 21, 1934, pursuant to said authority are hereby amended by substituting therefore the following regulations in so far as future transactions thereby or hereby regulated are concerned:
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> REGULATION II. Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (48 Stat. 195) and the orders and regulations issued thereunder that records be kept and reports be furnished the Division of Investigations of the Department of the Interior fully covering such information as respects producing, refining, reclaiming, shipping, storing, transporting, buying and selling, or otherwise dealing in or handling petroleum or petroleum products as is hereinafter required, regardless of whether such transactions are in interstate

or foreign commerce or in intrastate commerce.

REGULATION IV. All persons engaged in producing, refining, reclaiming, shipping, storing, transporting, buying or selling, or otherwise dealing in or handling petroleum or the products thereof shall permit any officer, agent, or employee of the Division of Investigations of the Department of the Interior to enter upon their properties, plants, or facilities and to examine all of the books and records kept or required to be kept in accordance with these Regulations and all other books, papers, records, vouchers, run tickets, bills of lading, way-bills, charts, memoranda or other documents which are used by them in the process of producing, storing, refining, reclaiming, transporting, handling or otherwise dealing with petroleum or the products thereof, and to inspect such plants, facilities and properties and to gauge tanks and to examine wells, pipe lines, gathering systems, flow lines, pipe connections, storage tanks, loading racks, separators, pumps, meters or other measuring devices and any other equipment or instruments.

Every initial producer of petroleum and every initial manufacturer of every product of petroleum, shall accurately gauge and measure all petroleum and all products thereof before any part thereof leaves his possession or control. No means or device which prevents such accurate measurement shall be used. Complete and accurate records of all such measurements shall be kept up to date and preserved, and shall be open to the inspection of any duly authorized agent of the Division of Investigations of the Department of the Interior at all reasonable times.

Regulation V. From the date of approval of these Regulations the following records shall be kept and preserved accurately and completely, showing the complete details of each transaction as follows:

A. By Producers:

(1) The location of the producing properties, the number and location of wells thereon, and the allowable production for each property and well as prescribed by the proper State agency.

(2) The names and addresses of all persons having any interest in or title to the petroleum at the time of its production, including those owning royalty or overriding royalty interests.

(3) An opening and closing inventory of the crude petroleum on hand each 24 hour day.

(4) The daily production in barrels of petroleum produced from each lease and well (estimated as to wells which are produced into common tankage and of which no separate gauge is made) with a notation of the allowance made for basic sediment and water, and the tanks, identified by number, into which the petroleum was produced.

(5) The amount of crude petroleum consumed, refined or processed upon the property daily.

(6) A daily record of all deliveries of crude petroleum or products thereof, showing the names and places of business of all persons to whom such petroleum or products thereof was delivered, whether purchasers, consignees or transporting agencies, the quantity involved in each delivery, transportation or other disposition, the identity of the means of transportation by which the petroleum or products thereof was removed, and the identifying numbers of tenders

where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

(9) For properties capable of producing in excess of an average of 20 barrels per producing well per day, a diagram of the producing properties which shall accurately and completely show to scale the location and identifying number of each well on the properties, the location, capacity and identifying numbers of all tanks into which oil produced from said properties is run under the control of the producer prior to delivery to trunk pipe lines, the location and size of all pipe lines, flow lines, gathering systems or other outlets, and every method by which oil is delivered from said properties.

(10) True and complete copies of all reports and communications filed or required to be filed under these Regulations or orders issued under these Regulations.

(11) Such other records as may now be required under the rules and regulations of other governmental agencies, State or Federal, which supervise, regulate or tax the production of petroleum.

B. By Every Purchaser, Refiner, Storer, Shipper, or Consignor of Petroleum or Petroleum Products, and by Every Person dealing in Petroleum or Petroleum Products as a Factor, Broker, Buyer or Seller.

(1) An opening and closing inventory of crude petroleum and petroleum products on hand each 24 hour day.

(2) The daily receipts of crude petroleum and the products thereof showing the amount received, the place and date of each receipt, the tanks identified by number into which received, the names and addresses of all producers or other persons from whom the crude petroleum and the products

thereof were received, and a description identifying the transporting agency by which received.

(3) The amount of crude petroleum and the products thereof used or otherwise disposed of daily showing the amount run to stills and the amount and type of petroleum products produced.

(4) A daily record of all deliveries of petroleum and the products thereof including the names and addresses of purchasers and a description identifying the transporting agency delivering such petroleum and petroleum products, and the identifying numbers of tenders where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

(5) True and complete copies of all reports and communications filed or required to be filed under these regulations or orders issued under these Regulations.

(6) Such other records as may now be required under the rules and regulations of other governmental agencies, State or Federal, which supervise, regulate or tax purchasing, refining, storing, shipping or consigning or otherwise dealing in as a factor, broker, buyer or seller of petroleum and petroleum products.

* * * * *

REGULATION VI. From time to time or periodically as called for by the Secretary of the Interior sworn reports on forms approved by the Secretary of the Interior shall be filed by producers, purchasers, refiners, reclamation plants, transporting agencies, shippers, or other persons dealing in or handling petroleum or its products. Each such report when called for shall show the full and accurate data required completely to fill out such form, accurately and fully reporting the data called for from the records required to be kept under Regulation V above.

E. Order Issued July 20, 1934, Requiring Reports, Pursuant to Regulation VI of the Regulations issued July 20, 1934 (with forms "OES-3" and "OES-5" attached):

* * * * *

(2) Every refinery, reclamation plant, treating plant, gasoline plant, and every shipper of petroleum products in the East Texas area as defined in Regulation III promulgated by me on July 20th, 1934, pursuant to the aforesaid authority, shall file at the office of the Division of Investigations of the Department of the Interior in Dallas, Texas, not later than the fifteenth day of each and every calendar month beginning with the period ending August 15, 1934, for the preceding calendar month, a sworn statement on the form entitled "OES-3" which is attached hereto and is hereby approved by me, fully and accurately giving the data required to fill out such form.

(4) Every producer of petroleum in the East Texas area as above defined, shall file at the office of the Division of Investigations of the Department of the Interior in Dallas, Texas, not later than the fifteenth day of each and every calendar month beginning with the period ending August 15, 1934, for the preceding calendar month, a sworn statement on the form entitled "OES-5" which is attached hereto and is hereby approved by me, fully and accurately giving the data required to fill out such form.

Form O. E. S.-3.

UNITED STATES DEPARTMENT OF THE INTERIOR, DIVISION OF INVESTIGATIONS

Report required under Interior Regulation VI of section 9–C

Monthly report of ______________________ at ______________________, ______________________
(Name of refinery, reclamation, treating, gasoline plant or shipper) (Location of plant or loading rack) (P. O. address)

Refiner's monthly report in barrels (42's) for ______________________, 193__
(Month)

RECEIPTS—CRUDE OIL

Tank no.	Tank capacity	Tank height	Stock on hand first of month (barrels)	From whom purchased or received		Lease	County	Pipe line, gathering system, railroad or trucks delivering oil				Received (barrels)
				Name	Address			Name	Address	Car initials and number	Truck license number	
Totals.												

DELIVERIES—CRUDE OIL

To stills (bbls.)	Kind of carrier	To pipe lines, gathering systems, railroads and trucks				Destination	Barrels delivered	Total deliveries and runs to stills (bbls.)	Over and short (bbls.)	Stock on hand last of month (bbls.)
		Name of carrier	Address of carrier	Consignee	Address of consignee					
Total..										

____
(Owner, officer or agent)

State of ______________________ }
County of ______________________ }

Before me, the undersigned authority, on this day personally appeared ______________________, known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn, on oath states that he is (owner, officer, or agent) operating or employed by ______________________, in the capacity of ______________________ that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this ______ day of ______________________, 193__

____
Notary Public in and for ______________ *County* ______________ *State.*

INSTRUCTIONS: This report to be submitted to the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Texas, on or before the 15th day of each calendar month, and should show complete data for the preceding calendar month. Include in crude receipts all crude run from own wells. Include in deliveries of refined products, deliveries to own retail stations.

PENALTY FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than ten years, or both, for knowingly and wilfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any Governmental department or agency.

[Reverse side follows]

Stocks, receipts and deliveries of products of petroleum (*Regulation VI, Section 9 C*)

RECEIPTS

(Owner, officer or agent)

State of }
County of }

Before me, the undersigned authority, on this day personally appeared ______________________________, known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn, on oath states that he is (owner, officer, or agent) operating or employed by ______________________________, in the capacity of ______________________________ that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this ______ day of ______________, 193___.

____
Notary Public in and for ______________ ***County*** ______________ ***State.***

INSTRUCTIONS: This report to be submitted to the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Texas, on or before the 15th day of each calendar month, and should show complete data for the preceding calendar month. Include in crude receipts all crude run from own wells. Include in deliveries of refined products, deliveries to own retail stations.

PENALTY FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than ten years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any Governmental department or agency.

[Reverse side follows]

Stocks, receipts and deliveries of products of petroleum **(*Regulation VI, Section 9 C*)**

RECEIPTS

Kind of product	Tank number	Tank capacity	Stock on hand first of month		From own stills		From other sources		Kind of carrier	Name of carrier	Address of carrier	Total receipts from other sources	
			Barrels	Gallons	Barrels	Gallons	Name	Address				Barrels	Gallons
Total.													

DELIVERIES (TO PIPE LINES, GATHERING SYSTEMS, RAILROADS OR TRUCKS)

Kind of product	Kind of carrier	Name of carrier	Address of carrier	License nos. of trucks	Tank car initial and no.	Consignee	Address of consignee	Destination	Quantity delivered		Over & short		Stock on hand last of month	
									Barrels	Gallons	Barrels	Gallons	Barrels	Gallons
Total.														

INSTRUCTIONS: Casinghead plants shall give the information requested above, showing origin of gas received at plant, and execute the affidavit provided on the reverse side hereof.

Detailed report of production by days—This report shall be filed separately as to each lease

(See reverse side)

Form O. E. S. No. 5

UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, DIVISION OF INVESTIGATIONS

Oil enforcement

[This report shall be filed separately as to each lease]

Producer's monthly report for month of ...., 19..

Report of .... (Company or operator) **..** (Principal place of business—town) **..** (Post-office address—P. O. box, office building, or street number)

.. (Residence address—P. O. box or street address) **..** (Field office address) **Total number of leases operated by you ......**

Lease...
Survey...
County...
Acres...

NEW WELLS COMPLETED

Well No.	**Date**........	**Well No.**	**Date**........
Well No.	**Date**........	**Well No.**	**Date**........
Well No.	**Date**........	**Well No.**	**Date**........

Wells flowing...
Wells agitating and pumping...
Wells dead...
Total number wells on lease...

LIST TANKS BY NUMBERS TO WHICH LEASE IS CONNECTED:

Total barrels capacity of tanks...

LOCATION OF ALL TANKS TO WHICH LEASE IS CONNECTED, NOT ON THIS LEASE:

Is lease connected to casinghead plant? .... (Yes or No)

Give name of casinghead plant, if so connected...

	Barrels
Total current allowable for month..................	
Back allowable scheduled to be produced during month..................	
Back allowable permits Nos.	
Total oil on hand at beginning of month..................	
Current production for month..................	
Back allowable actually produced during month..................	
Total oil available for deliveries (amount on hand plus production)..................	

DELIVERIES DURING MONTH

	Barrels
Pipe-line runs..................	
Name and address of company gathering oil..................	
Name and address of purchaser or consignee..................	
Deliveries to railroad tank cars..................	
Name of railroad .... **Station** .... **Loading rack**..........	
Deliveries to trucks..................	
License Nos. of trucks.......	
Truck movement permit Nos.	
Other disposition of fuel and tank bottoms..................	
Tank-bottom permits (allowable oil): Date.......... **barrels**..........	
Date........ **barrels**........ **Date**........ **barrels**........	
Date........ **barrels**........ **Date**........ **barrels**........	
Total deliveries of oil during month..................	
Total oil on hand at end of month..................	

No other oil was produced or permitted to be produced from any well on said above-described property, nor was any oil delivered to any person, pipe line, railroad, truck, or purchaser from the above-described property during the period covered by this report except as is fully shown on said report.

STATE OF .... COUNTY OF ....

Before me, the undersigned authority, on this day personally appeared ...., known to me, who, being by me duly sworn, on oath states that he is (owner, officer, agent) operating or employed by .... in the capacity of ...., that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this .... day of ...., 193...

(Owner, officer, or agent)

Notary Public in and for .... County, ... State.

PENALTY—FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and wilfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any governmental department or agency.

INSTRUCTIONS

The original of this form shall be filed with the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Tex., on or before the 15th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing. The affidavits required before this report may be filed shall be complete and shall cover

(Owner, officer, or agent)

STATE OF ________________ COUNTY OF ________________

Before me, the undersigned authority, on this day personally appeared ________________ known to me, who, being by me duly sworn, on oath states that he is (owner, officer, agent) operating or employed by ________________ in the capacity of ________________, that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this ________ day of ________________, 193__.

Notary Public in and for ________________ *County,* ________________ *State.*

PENALTY—FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * * relating to any matter within the jurisdiction of any governmental department or agency."

INSTRUCTIONS

The original of this form shall be filed with the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Tex., on or before the 15th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing. The affidavits required before this report may be filed shall be complete and shall cover the data contained on all parts of said report.

(See reverse side)
[Reverse side follows]

If the production from any well is run and gaged separately the appropriate data with respect thereto shall be shown. The appropriate data shall likewise be shown for each well separately during the test period. Where more than one well are produced into common tankage, indicate such fact on the report, bracketing such wells, showing which wells are produced into common tankage and showing the data daily as to the aggregate production of such wells so producing into common tankage, reporting separately for each battery of common tankage where different groups of wells produce separately into different common tankage.

BARRELS PRODUCED

Day of month	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Total for day
1																					
2																					
3																					
4																					
5																					
6																					
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TOTALS																					
Test data																					

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APPENDIX B

In this appendix (except under headings IX and X) are reprinted for the information of the Court excerpts from official and trade publications, referred to in the text, containing matters of common knowledge to persons familiar with the petroleum industry.

I. GENERAL DESCRIPTION OF THE INDUSTRY

1. Senate Document No. 61, 70th Cong., 1st Sess., Federal Trade Commission Report, *Petroleum Industry, Prices, Profits, and Competition:*

[Pages 6–9]

SECTION 1. *Characteristics of crude petroleum.*—Crude petroleum consists of various hydrocarbons, including small proportions of oxygen, certain nitrogenous substances, and sometimes sulphur. In general there are three important types of crude petroleum; namely, (1) Paraffin-base crudes, which contain solid paraffin hydrocarbons and practically no asphalt; (2) asphalt-base crudes, containing asphalt and no paraffin; and (3) paraffin-asphalt crudes, which are a combination of the former two types. The crudes produced in different sections of this country vary widely in viscosity and in specific gravity. Some light crudes flow almost as freely as water, while other crudes are so heavy that it is necessary to heat them in order to transport them by pipe line. The wide differences in the quality of different crudes present difficult problems in connection with their production, transportation, and refining, and result in wide differences in price. For example, the light paraffin-base crudes produced in the Appalachian fields have always commanded a much higher price than other crudes, partly because of their high lubricating and gasoline content. In the midcontinent, the Rocky Mountain, and the California fields there is a very wide range in the prices paid at the oil wells for different crudes.

SECTION 2. *Branches of the petroleum industry.*—The domestic petroleum industry includes producing, pipe line, crude purchasing, refining, wholesale marketing, and retail marketing branches. A very large proportion of the business of each branch of the industry is handled either by large integrated companies whose activities compass the entire industry; or by concerns that have subsidiary or affiliated companies engaged in all branches of the business. A number of the larger companies own their own tank cars and operate fleets of tank steamers for coastwise and foreign trade.

Production.—The producing branch of the petroleum industry includes all of the activities incident to the exploration and location of oil lands, the drilling of oil wells, the extraction of crude petroleum from the earth and its storage in field or settling tanks. As natural gas is usually given off as the crude petroleum is brought to the surface, many producers extract casinghead gasoline from the gas and then sell the dry gas to gas companies, or, as has been done in California and in the Seminole (Oklahoma) pool, they maintain the gas pressure in the oil pool by forcing the dry gas back into the oil well.

The great bulk of the oil lands held by producing companies is leased from the landowner on a royalty basis. One-eighth is the most common royalty portion. The producing company, if also a purchaser, usually runs the royalty portion with its own oil paying the royalty owner the current market price. If the producer sells his own crude, it is customary for the purchaser to buy the entire production, paying both the producer and royalty owner direct for his share.

Pipe lines.—The pipe-line branch of the industry collects the crude petroleum from the producer's field or settling tanks through a system of pipes called gathering lines. Gathering-line pipes are usually 4 inches or under in diameter. Much of the gathering-line pipe is laid on top of the ground. These small pipes connect with larger pipes and lead to gathering-line pumping stations. In highly productive oil pools, particularly when different producers own or control small tracts of land, there is an extensive network of gathering lines leading from the oil pool. In many cases several pipe-line companies have gathering lines in the same oil pool and sometimes on the same lease.

The topography of the region in which an oil pool is located is the most important factor in determining the type of gathering-line system that must be established. In some cases the topography of the country is such that a pipe-line company can locate its gathering-line pumping station so that the crude petroleum will flow by gravity from the producers' tanks to the receiving tanks at the pumping station.

In other cases, however, much of the crude petroleum must be forced through the gathering lines by the extensive use of field pumps located on the producer's lease, or be sucked into the gathering-line stations by suction pumps located at the gathering-line pumping station. If the producer pumps his oil into the pipe-line company's lines, he is paid for this service.

Practically all of the crude petroleum produced in the United States is collected by gathering lines, and the great bulk of it is transferred to a trunk pipe line for transportation to near-by refineries, to inland or seaboard refineries, or for transportation to a seaport, from whence it is carried to a refinery in a large tank steamer. Since 1923 large quantities of California crude petroleum have been piped to Los Angeles Harbor and from thence transported to the Atlantic seaboard by tank steamer. In times of temporary overproduction the crude petroleum may be transported to a large "tank farm", where it is stored for use when consumption exceeds current supply. The crude oil in storage, which for some time has been sufficient to supply refinery requirements for half a year or more, is largely owned by large crude petroleum purchasing companies or by petroleum refiners.

Trunk-line pipes have a much greater diameter than gathering-line pipes. The trunk-line pipes of the large interstate pipe-line companies range from 8 to 12 inches in diameter, and in some cases from 4 to 8 lines have been laid parallel to each other in order to handle the tremendous volume of crude oil which is constantly being pumped hundreds of miles to large refining centers.

Comparatively small quantities of crude petroleum are transferred from gathering lines to tank cars for shipment to near-by refineries. Occasionally where a large refiner desires to secure a certain crude unmixed with other crudes, tank-car shipments are made for considerable distances.

Crude purchasing.—The great bulk of the crude petroleum, not refined by the company producing it, is purchased by comparatively few large purchasing companies. Many of these companies are large refiners or are subsidiary to or affiliated with large refining companies. The remaining production is purchased by small refiners and by companies engaged mainly in producing and dealing in crude petroleum. The bulk of the 2,500,000 barrels of crude petroleum now being produced daily is either refined by the producing interest or sold daily at the current market price. In some cases, however, certain large companies have the production of a few large producers under contract for delivery over a considerable period of time.

Refineries.—There are three types of refineries operated in the United States. Some small refineries, called skimming plants, distill crude petroleum at atmospheric pressure and produce only gasoline, kerosene, and fuel oil. Another type of refinery, which may be termed a complete refinery, carries the refining process much farther and obtains a wide range of refined products. A number of the smaller refining companies in the East produce a complete line of refined products. The third type is one equipped with a "cracking plant", which subjects the gas and fuel oil to very high temperatures under superatmospheric pressure, whereby the molecules are broken up or "cracked" and the lighter products are given off. Certain refining companies have produced from 50 to 60 percent of gasoline from ordinary grades of crude petroleum. Cracking plants are generally used by complete refineries and also by a large number of skimming plants.

The bulk of the refining business of the country is done by large integrated companies and by concerns having subsidiary and affiliated companies engaged in the different branches of the business.

Wholesale marketing.—The bulk of the wholesale business in gasoline, kerosene, gas oil, fuel oil, and lubricating oils and greases is done by large integrated companies. Some of these companies extend their marketing activities throughout a large number of States, others market in a single State or in a few States. These large wholesale marketers generally divide their marketing territory into two or more parts under the control of a divisional sales manager. The smaller wholesalers often confine their marketing activities to a small section of a State, usually in the more populous parts.

At the present time probably from 75 to 85 percent of the total quantity of gasoline consumed in the United States is sold to the retailer or ultimate consumer either by the company manufacturing it or by an affiliated or subsidiary concern. The remainder is purchased by wholesalers f. o. b. refinery from the smaller refiners, or from larger marketers and brokers at important seaports such as Jacksonville, Fla., Norfolk, Va., Baltimore, Md., or New York City. Gasoline is distributed in wholesale quantities in tank steamers, tank cars, barges, motor trucks, and horse-drawn tank wagons. The large refiners distribute gasoline from their refineries to the principal marketing centers in tank steamers and tank cars. Tank steamers are used extensively for coastwise shipments from Gulf coast refineries to the Atlantic seaboard, from refineries on San Francisco Bay and in southern California to the large markets of the Columbia River and Puget Sound regions; and for tank-ship shipments via the Panama Canal to the Atlantic seaboard. During the last three years millions of barrels of gasoline produced in California were transported by tank steamer via the Panama Canal to the Atlantic seaboard. Daily entire trainloads of gasoline in tank cars, destined for large consuming centers, leave the important refining regions of the Rocky Mountain and Mid-Continent oil fields and the large refineries in the East.

Extensive storage facilities are maintained in the large cities along the Atlantic, Gulf, and Pacific coasts and at important interior refining points from which the requirements of the retail dealer are supplied. Shipment is made from such points in tank cars and barges to bulk stations, from which point retail dealers are supplied by tank truck or tank wagons. The seasonal demand for gasoline necessitates the accumulation of large stocks during the winter months in order to meet the requirements of the heavier spring, summer, and autumn trade. The bulk of the retailers' supply of gasoline is distributed by tank trucks or tank wagons from storage tanks located near railroad sidings. Tank-truck and tank-wagon drivers usually sell at retail to anyone on the route who will buy 5 gallons or more at a single purchase.

Kerosene is distributed in the same way as gasoline but the quantities sold are much smaller. Sales of gas and fuel oil and road oils are largely made direct from the main sales offices of refining companies. These products move in large quantites. Lubricating oils and greases are sold in containers, such as barrels, cans, and cases. Transportation and manufacturing companies buy these products in large quantities. The motor-vehicle consumption is supplied through the gasoline and kerosene wholesale and retail marketing organization.

Retail marketing.—Gasoline is distributed to large consumers in barges, tank cars, tank trucks, and tank wagons, and to small consumers through service or filling stations, garages, repair shops, curb pumps, etc., and to a limited extent from tank wagons and tank trucks. Many large wholesale marketing companies operate a large number of service stations, and many small wholesalers are also engaged in the retail business. C. B. White, Chicago Manager of the Vacuum Oil Co., stated recently that whereas five years ago there were 12,000 gasoline service stations in the United States there are now "more than 250,000 outlets for oil and gasoline—only 80 cars per station."[1] This later total includes service stations, garages, curb pumps, etc. In the Standard Oil Co. (Indiana) territory, which covers 11 States, there were 19,393 service stations in 1926, as compared with 4,875 in 1921.

[Pages 99–100]

SECTION 1. Methods of marketing crude petroleum—*Running crude into gathering lines.*—As already pointed out, crude petroleum in all the oil fields of this country is collected or gathered from the thousands of oil wells by a system of pipe lines called gathering lines. When crude petroleum is brought from the oil pool to the surface of the earth through the tubing of an oil well, either by pumping or by gas pressure, there is mixed with it varying percentages of water, sand, and other sediment. In order to separate the water and sediment from the crude, it is run into tanks called settling tanks, where the water and other sediment is allowed to settle to the bottom of the tank before the crude is run into the gathering lines.

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[1] National Petroleum News, Apr. 20, 1927, p. 27.

The crude run into the gathering lines also carries more or less sediment. Usually the purchasing company makes a deduction of 3 percent from the total quantity to cover any water or sediment remaining in the crude run from the producer's tanks. Particularly for purchases of large quantities and where the crude is known to contain a large proportion of water and sediment, additional deductions are based on centrifugal tests. As crude petroleum expands upon being heated, adjustments are made to cover changes in quantity due to difference in temperature.

When a producer first sells crude petroleum, or when new wells are brought in, the pipe-line company gathering the crude connects the producer's tanks with its gathering lines. The cost to a pipeline company of making a "connection" with a new producer or with a new lease varies widely from a few hundred dollars to $2,000, or even more. In some cases in a given oil pool a producer may have his tanks connected with two or more pipe-line systems, but in practice many small producers are limited to but one purchaser because only one pipe-line system is available. As a rule a producer is free to have his property disconnected from one pipe-line system and connected with another, and this may occur if the quantity he has to sell is sufficiently large to make it attractive for a rival pipe-line company to make a connection. In some cases, where the expense of making a connection is very large, the pipe-line company making it insists upon a contract guaranteeing to it the output of the well or lease for a specified time.

When a producer has a tank full of crude petroleum ready to deliver to the pipe-line company, he notifies the company's gauger, who, after gauging the contents of the tank, opens a valve that permits the crude to flow or to be pumped from the tank into the gathering lines. Later, after the tank has been emptied to a certain point, the valve is closed, thereby "cutting out" the tank from the gathering line; then the tank is gauged again and a ticket is issued showing the height of the crude in the tank at each measurement. This ticket also serves as a receipt for the producer. The quantity of crude petroleum taken is determined by the purchasing company by reference to tank tables, carefully computed from actual measurements, which show the cubic contents for every tank from which crude is purchased for every difference in height in graduations of a quarter of an inch. The quantities of crude petroleum gathered from an oil pool or an oil field are termed "pipe-line runs."

2. Department of Commerce, Bureau of Mines, *Mineral Market Reports* (No. M. M. S. 154, Nov. 16, 1932):

National distribution of gas oil and fuel oil, 1930–1931

[Figures in barrels of 42 gallons each]

Uses	1930[1]	1931
Railroads	67, 900, 035	58, 150, 366
Steamships (including tankers)	94, 151, 823	83, 558, 580
Gas and electric-power plants	26, 768, 557	24, 490, 251
Smelters and mines	5, 936, 055	3, 626, 549
Iron and steel products	15, 210, 420	12, 855, 395
Chemicals and allied industries	3, 258, 156	2, 907, 773
Automotive industries	2, 225, 272	1, 783, 547
Textiles and their products	4, 474, 846	5, 683, 693
Paper and wood pulp	2, 235, 890	1, 833, 880
Logging and lumbering	2, 269, 346	1, 667, 377
Cement and lime plants	3, 007, 547	2, 434, 567
Ceramic industries	1, 992, 531	1, 598, 485
Food industries	7, 033, 361	5, 660, 080
Other manufacturing	11, 663, 906	9, 998, 329
Commercial heating	17, 508, 085	15, 731, 150
Domestic heating	10, 104, 792	10, 446, 139
United States Navy, Army transports, etc	8, 680, 929	9, 203, 243
Used as fuel by oil companies	53, 436, 945	51, 196, 684
Miscellaneous uses	11, 235, 312	10, 266, 692
Domestic deliveries	349, 093, 808	313, 092, 780
Exports and other shipments	36, 449, 884	29, 231, 049
Deliveries of furnace oils, etc., for domestic heating	15, 666, 000	14, 213, 000
Total distribution	401, 209, 692	356, 536, 829

[1] Revised figures.

3. H. R. Report No. 2192, 72nd Cong., 2d Sess., *Report on Pipe Lines:*

[Pages v–xxi]

THE OIL SITUATION

Petroleum, oil, and gas, like the metallic ores and other minerals, are a natural resource which, once exhausted, cannot be replaced. A sound national policy calls for careful conservation of all natural resources, but in the case of no other of like importance to our national life is the need so pressing.

Doubtless a time limit exists for the duration of our coal, iron, copper, and other mineral reserves, but the date is far in the future. It appears to be otherwise with petroleum. In the report of the Federal Oil Conservation Board to the President of the United States, published in 1926, it was stated that the total reserves in the known and proven wells were estimated at 4,500,000,000 barrels, or about six years' supply.[2] This figure has only admonitary significance.

The six years have passed. The public demand for petroleum has been supplied; indeed, in a sense, more than supplied, for the general complaint on all hands is of overproduction, and it would be rash to set any definite time limit to our supply even now. Since the report appeared petroleum production increased from 764,000,000 barrels in 1925 to 1,006,000,000 barrels in 1929. Since then production has fallen off to 898,000,000 barrels in 1930 and 845,000,000 barrels in 1931–32. This falling off, however, is not due to depletion or immediate prospect of depletion. It is estimated by experts that the potential production at the present time is

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[2] Report of the Federal Oil Conservation Board, Part 1, 1926, p. 6. It was obtained by dividing an estimate of the quantity of oil in proven sands accessible to wells already drilled and recoverable by methods then in use by the consumption for that year. On the one hand it was too generous. Recovery from the known and proven wells could not maintain the then existing rate of consumption without decline, because the yield of a well decreases steadily year by year. On the other hand, the figure of six years was not intended to fix the life of the oil industry. It made no attempt to allow for the finding of new fields or for improved methods of recovery from known and proven fields. However, the board's figure served to illustrate vividly the national dependence upon fortuitous discovery of new sources of supply and to call public attention to the urgency of conservation.

5,000,000 barrels a day if all wells were run to full capacity and that this rate could be maintained for a considerable number of months. The actual output is about 45 percent of the potential.[3] The falling off, then, is not due to depletion, it is rather due to the coercive measures of curtailment taken by the several conservation commissions of State authorities. With a return to prosperity the upward trend in production will doubtless be resumed. How rapid has been this upward trend in the past may be seen from the following table.

Production of crude petroleum in the United States

	Barrels		*Barrels*
1900	63, 600, 000	1917	335, 300, 000
1901	69, 400, 000	1918	355, 900, 000
1902	88, 800, 000	1919	378, 400, 000
1903	100, 500, 000	1920	442, 900, 000
1904	117, 100, 000	1921	472, 200, 000
1905	134, 700, 000	1922	557, 500, 000
1906	126, 500, 000	1923	732, 400, 000
1907	166, 100, 000	1924	713, 900, 000
1908	178, 500, 000	1925	763, 700, 000
1909	183, 200, 000	1926	775, 000, 000
1910	209, 600, 000	1927	903, 800, 000
1911	220, 400, 000	1928	901, 500, 000
1912	222, 900, 000	1929	1, 007, 300, 000
1913	248, 400, 000	1930	898, 000, 000
1914	265, 800, 000	1931	845, 800, 000
1915	281, 100, 000	1932	
1916	300, 800, 000		

In its fourth report, issued in 1930, the Federal Oil Conservation Board commented further on the extent of the underground reserves. Its figures of 4,500,000,000 barrels in 1926 had not attempted to measure the total potential reserves of the country, but was intended to indicate the relatively small extent of known and proven reserves accessible to existing wells. Nevertheless, the progress of technology was operating to increase the reserve potentially available. "During the last decade", stated the board,[4] "every estimate that had been made of the recoverable oil remaining in underground storage has required revision in the light of later increased production factors." The reasons given for the changing viewpoint on reserves throw considerable light on the difficulties and uncertainty that must be reckoned with in estimating the duration of our petroleum resources. They are useful in tempering our judgment between alarm and complacency. A brief summary will be given in the following paragraphs.

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[3] Anderson, W. F., The Oil and Gas Journal, Jan. 18, 1932.

It was pointed out:

(1) That great advances have been made in oil geology. Improved technique in determining the location, shape, and extent of structures favorable to the accumulation of oil have been developed, and as a result new and prolific oil sands have been tapped.

(2) That deep drilling has resulted in the recovery of oil at depths hitherto thought unattainable. In 1925 a depth of 5,000 feet had been thought an outstanding accomplishment. By 1930 practically all the problems for attaining a depth of 10,000 feet had been solved. Special steels and cements for enduring the high temperatures of the deep borings have been developed and improved engineering methods to meet the new conditions have been forthcoming.

(3) That improved methods have made it possible to recover a much larger proportion of the oil con-

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[4] Federal Oil Conservation Board, Report IV, p. 6.

tained in known and proven sands. Large quantities of oil have been recovered from fields which had been abandoned or apparently exhausted. A "second crop" from the Bradford and Allegheny fields has added 600,000,000 barrels to the recoverable supply.

These discoveries in science and these improvements in technique had, therefore, greatly extended the limits which seemed closing in on the possibilities of oil recovery when President Coolidge appointed the board in 1924. Yet, as the report was careful to point out, lest the inadequacy of earlier estimates should lead to a too easy optimism for the future, none of these discoveries or improvements had added a barrel to the physical quantity of oil in the reserves. They merely meant that through them such reserves as there were had been depleted to a greater extent than had been deemed possible. They in no wise made it a matter of less national concern to conserve these resources and to avoid waste.

One thing is brought out forcibly by both reports. It is this: That maintenance of output sufficient to meet an existing, and probably increasing, demand involves in addition to whatever improvements may be made in engineering methods, constant recourse to new drilling and to new fields. The flow from a given well, however copious it may be at first gradually declines, and in spite of all improvement in technique must ultimately cease, simply because no more oil can be recovered. New borings must be made and new areas sought. For a quarter of a century, in order to meet the demand for oil, there have been completed an average of 15,000 new wells annually, and there is no reason for thinking that this will be less in the future under the existing law and present methods of production.[5]

This leads to the question, What is the prospect of discovery of new fields? At best it is uncertain. While in recent years great advance has been made in petroleum geology, the location of oil deposits from surface indications is still conjectural. Even more conjectural is the richness of the deposit when one is located. On this point these words from Thom may be quoted. "It is never possible for a geologist to say (honestly) that geologic evidence proves that oil is present beneath a particular locality in commercial quantities. Only actual drilling can prove the productivity or nonproductivity of a promising anticline or other structural feature. On the other hand * * * it is possible for a geologist to say that certain regions and areas are barren of valuable oil deposits because of the nature of the rocks occurring at the surface of those regions.[6] That is, a geologist can say of one region from surface indications, "No oil is here, it is useless to drill", of another from application of geophysics, "Oil may be here, but you can't be sure till you try."

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[5] McIntyre, James, Field Operation Suffered in 1931. The Oil and Gas Journal, Jan. 28, 1932, p. 15. The actual record, including oil wells, gas wells, and dry holes for the last 10 years was as follows: 1922, 24,658; 1923, 23,438; 1924, 21,894; 1925, 25,623; 1926, 29,319; 1927, 24,143; 1928, 22,331; 1929, 26,356; 1930, 21,240; 1931–32, 12,245. Of all the wells drilled an average of 62.3 percent were oil wells; 10.4 percent gas wells; and 27.3 percent dry holes. The falling off in 1930 and 1931 is doubtless due mainly to the depression, though the enormous yield of the east Texas field in 1931 (of which more will be said later) was probably a contributory factor.

[6] Thom, W. T., Jr., Petroleum and Coal: the Keys to the Future, 1929, p. 122.

On this basis geologists tell us that 43 percent of the area of the United States is barren of oil, and that of the remaining 57 percent only a comparatively small portion is at all promising. However, 57 percent of the United States is a large area. About all that can be said on the basis of our present geological knowledge is that the duration of our oil reserves is very indefinite. Even with the most intelligent methods applied to their conservation their duration cannot be made to compare with that of our coal and iron reserves. The end may be postponed for a century or so. It is possible that it may come within a relatively short period.

Nor can we look forward with complacency to supplies from other regions of the world when our own reserves are exhausted. The United States now produces and consumes not far from two-thirds of the world output. Its reserves are among the richest in the world. When they prove insufficient to the need and the United States seeks other fields, its enormous rate of consumption, combined with the consumption of all other countries leaves little room for optimism for long duration of the world's reserves. Even assuming that other countries would grant free access to their reserves—a rather questionable assumption—the end would seem to be in sight. In 1920, Dr. David White published an estimate that the portion of the world's oil reserves recoverable by methods then in use amounted to 60,000,000,000 of barrels.[7]

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[7] Ibid, p. 203.

This estimate, which it is to be observed, includes the reserves of the United States, may fairly be multiplied by two or three to make allowance for improved methods which have come into being since the estimate was made, but even then with a present world annual consumption of about 1,500,000,000 barrels, to say nothing of a probable increase, a little over a century would seem to be the limit of our period of grace.

The prospect of the complete exhaustion of the world's oil reserves naturally raises the question of substitutes. What is to take the place of petroleum when the lean years set in? A disposition is manifested in some quarters to rely blindly on the progress of science and invention. There is here an unbounded field for speculation, and in view of the amazing achievements of science in the recent past, it would be foolish to assert that such blind faith is wholly vain. Such faith is fortified rather than weakened by the reflection that the end will not come suddenly. As the reserves approach exhaustion the price of all petroleum products will rise, and the rise in price will be the very thing needed to stimulate research and inventive genius. Petroleum is a form of stored energy, probably derived like practically all our other forms of energy, indirectly from the sun. The sun is still flooding the earth with light and heat, a theoretical horsepower to every three-eighths of a square yard receiving the vertical impact of its rays. It has been estimated that the energy received by the earth directly from the sun amounts to about 160,000 horsepower per capita of the earth's present population.[8]

Human ingenuity may yet harness some fraction of this inexhaustible store. Oil may be obtained from coal and from oil shale. Industrial alcohol may be used as a motor fuel. All things are possible in the unconfined spaces of the imagination. All that can now be said with assurance is that for petroleum in some of its uses no practical substitute is in sight except at price levels far above what we are accustomed to pay.

It might be supposed that rational beings intrusted with a definitely limited supply of a substance of such vital importance to their civilization would have displayed great economy in its production and use. In fact, as a result partly of indifference but partly of the legal rule of capture applicable to the development of oil and gas properties, the waste has been appalling. To understand the nature and sources of this waste a few

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[8] Ibid, p. 214. The same author quotes from the Transactions of the First World Power Conference (Vol. IV, p. 1308) the following estimates made by Prof. Svante Arrhenius, of the comparative energy values of certain major sources of energy:

Total energy of world's oil reserves	1.00
Total energy of world's coal deposits	367.00
Energy of coal consumed annually	.08
Energy of air currents (annual figure)	275.00
Energy annually stored by growing plants	1.25
Energy of utilizable water power (annual figure)	.33
Solar radiation of heat to earth's surface (annual figure)	442.00

Thom thinks that in the light of recent improvements in geological and engineering methods the estimate for oil should be increased seven fold.

words must be said in regard to the geology of petroleum occurrence and the technique of its exploitation.

Petroleum, associated with natural gas, is found in what are called "oil sands" at varying distances below the earth's surface. It is a mixture of a considerable number of hydrocarbons of varying degrees of volatility, and is believed to have been elaborated under heat and pressure from substances of animal or vegetable origin in the process of decomposition. It first appeared as minute and scattered droplets, often in oil shales. Concentration in paying quantities required a combination of geologic factors: A porous reservoir rock, usually an "oil sand"; a local "fold" or "dome"; and an impervious cover, arresting escape of the oil to the surface. Such are the conditions essential to an oil pool, being source rock, porous formation for migration and accumulations and undulations, or a departure from horizontal in the earth's strata.

Recovery is effected by boring or drilling until the pool is tapped. A "derrick", familiar in picture of oil fields, is erected over the point of operation. As the drilling proceeds strings of pipe, known as "casing", are lowered for the purpose of lining the hole. When the oil sands are reached the natural gas with which the petroleum is usually associated is suddenly released from the high tension under which it has remained pent up for untold ages. It forces its way through the sands, carrying the petroleum with it, and rushes, often with great violence, upward to the surface.

The "flush flow", when the pool is first tapped, is often very vigorous and copious, sometimes spouting to a great height in the air. In this case the well is called a "gusher." After a time the pressure subsides and the flow becomes more gentle, or it may even require a pump to bring the oil to the surface. As time goes on the yield becomes less and less copious. Finally, the flow ceases and the well is abandoned. Abandonment, however, does not mean that all the petroleum in the pool has been recovered. Far from it. It is the general opinion that much more remains than is recovered. Estimates of the proportion left in the ground range from 25 to 90 percent, the commonest estimate being 80 percent.[9]

Such disparity in the estimates is to be expected, from the nature of the case, and undoubtedly the proportion recovered does in fact vary greatly with different geologic conditions and methods of operation. But from the standpoint of the present discussion, the fact that leading experts hold that only about a fifth of the oil is recovered from the sands by the methods of recovery in general use is of tremendous significance.

From this brief outline of the principles of petroleum geology and of the methods in use for recovering the oil it is possible to understand why more than in the exploitation of any other natural resource, the recovery of petroleum has been accompanied by enormous waste. These wastes will be discussed under the following heads: (1) Wastes connected with the flush flow. (2) Wastes from incomplete recovery. (3) Wastes from unrestricted competition.

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[9] Osgood, Wentworth, H., Increasing the Recovery of Petroleum, p. 5.

(1) Wastes connected with the flush flow: As just explained, when the pool is first tapped the natural gas which has been held back for ages rushes to the surface, carrying the oil with it. When the flow is very great, vast quantities of both oil and gas may escape into the air unless the well is promptly brought under control. In the past "gushers" have sometimes run wild for weeks before being brought under control, with an absolute waste of millions of barrels of oil. Sometimes the oil caught on fire, with great danger to life and property and with great money loss involved in extinguishing the fire or "killing" the well.

With the great advances in oil-field technology of the last few years, losses of oil through wells escaping from control and running wild are now seldom serious. Losses of natural gas from this cause, however, are still a grave problem under certain geologic conditions, as indicated by the wild "crater wells" in the Richland gas field of Louisiana.

Great as is the loss when wells are allowed to run wild, this is by no means the full extent of the waste. As we have seen, it is the pressure of the natural gas that brings the oil out of the sands into the well. Hence the oil when it reaches the surface is always accompanied by gas. But when the well is drilled primarily for oil, it often happens that no arrangements have been made for utilizing the gas. The oil is conserved but the gas is permitted to escape into the air. Yet the energy value of the gas thus lost may exceed that of the oil retained. In the Cushing field in Oklahoma the estimated waste from this source was 300,000,000 cubic feet per day or 100,000,000,000 cubic feet per year, a loss of energy equal to that embodied in 5,500,000 tons of coal.[10]

The fourth report of the Federal Oil Conservation Board cited two wells in Federal leases in California which had turned into pipe lines nearly $5,000,000 worth of oil, but which had meanwhile permitted gas to a value of $10,000,000 to escape into the air.[11] The same report also stated that in the Kettleman Hills area the gas which was allowed to escape, even without counting its gasoline content, was worth more at existing field prices than the high-grade oil which that gas brought to the surface.[12]

Other examples of the waste of natural gas are cited in the fifth report of the Federal Oil Conservation Board:

> In the Oklahoma City field alone, the wastage probably has averaged 300,000,000 cubic feet of natural gas per day for the past two years.[13]
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> From January 1, 1920, to March 31, 1932, there has been produced in California a total of 3,527,309,000,000 cubic feet of natural gas. Of this amount 2,294,000,000,000 cubic feet, or 65 percent, has been utilized and the remaining, 1,233,309,000,000, or 35 percent, has been wasted.[14]

Another cause of loss associated with the flush flow is the practice of flowing oil into earthen pits in the absence of steel storage. As pointed out in a memorandum the committee has received from the United States Bureau of Mines—

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[10] Report of Federal Oil Conservation Board, pt. 1, p. 7.

[11] Ibid., Part IV, p. 25

[12] Ibid., Part IV, p. 16.

[13] Report V of the Federal Oil Conservation Board, p. 50.

[14] Ibid., p. 47.

> this practice has occurred many times in the development of new fields and always has caused physical waste of crude oil through evaporation and seepage into the ground. Operators are well aware of the wastefulness of earthen storage, but nevertheless it is often resorted to in the stress of overproduction.

(2) Wastes from incomplete recovery: Among the most serious of all causes of waste is the premature or irregular encroachment of salt water in the producing sands, brought about by hasty and unregulated competitive drilling. The salt water normally underlies the oil or encircles the margin of the pool, advancing upwards as the oil is removed. If drilling proceeds irregularly, large bodies of oil may be trapped by advancing bodies of water or the two may become so mingled that the oil is rendered valueless. The amount of oil so lost cannot be measured, but it is certainly very great.

A further and enormous loss of oil arises from the premature dissipation of the gas pressure. The comparatively small percentage of the total oil content of the sands which is actually recovered has already been referred to. The gas is frequently the chief propulsive agent which forces the oil out of the sands, and if this gas is allowed to escape, as it does when a well is permitted to run wild, even the small percentage of the total which can be recovered without resorting to artificial pressure is greatly reduced. Therefore, if gas is not conserved in the flush flow, there is loss not only from the gas that escapes but from the oil which might have been, but is not, recovered.

This latter loss, however, is not necessarily complete. Artificial pressure from air, gas, or water may be introduced into the sands and a second crop of oil extracted therefrom. However, this involves great expense, and heavy consumption of fuel to provide the necessary energy, and it is clearly good economy to recover as much oil as possible by means of the propulsive agent which nature has provided.

An illustration of increased recovery from oil fields by new methods is afforded by the Bradford field in McKean County, Pa. In 1922 the average daily production in the county was 5,195 barrels. Water flooding has greatly increased the recovery as is shown by the fact that in 1931 the daily average production in McKean County was 24,396 barrels.[15]

Just how great are the possibilities from the second crop of oil from abandoned wells is something of a matter of conjecture. Experience warrants the belief that a second crop equal to the first may be recovered, particularly in certain fields. Some oil men are so optimistic as to predict a recovery of from two to three times the first crop. A recent writer in a 2-volume work devoted exclusively to this subject makes this striking statement.

> The amount of oil left underground in fields that have been abandoned offers more attractive opportunities for increased production than wildcat territory.[16]

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[15] Proceedings of the Pennsylvania Mineral and Forest Land Taxation Commission, December 1932.

[16] Osgood, Wentworth H., Increasing the Recovery of Petroleum, p. 77.

All such secondary recoveries, however, imply increasing cost of production and higher prices to the consumer.

(3) Wastes from unrestricted competition: To a great extent the wastes already discussed arise from this source. In other industries waste of natural resources is one of the black marks that must be set against competition. The eager haste and low prices which it induces compel competing owners, under penalty of being squeezed out, to "skim the cream" from their holdings and leave much valuable material which under a more rational system of industry might be utilized. But in no other field is the compulsion to waste so great.

The oil, as we have seen, is stored in a "pool" of considerable extent underground, but this "pool" may lie under the properties of many competing owners. The typical pool underlies the holdings of dozens or scores of farmers; and under conditions of town-lot drilling the number of surface owners may run into many hundreds. Consider the case at a section corner where four farms join. Obviously, if one owner drills a well near his corner, the other three owners are compelled also to drill under penalty of having the oil lying under their respective properties appropriated by the first owner. The law, generally so jealous of the rights of private property, has offered no protection to the owner of oil lying under his holding, if another owner can take it from him by drilling into the pool from an adjacent holding, and thus furtively drawing it away from him.

This situation has led to unseemly haste in the drilling and operation of wells. It has resulted in enormous wastes from "gushers" through the escape into the air of oil and natural gas in the manner already described, and it has resulted in waste of another sort arising from the effect of such unrestricted competition on the market. From what has been said it is evident that competition of the character described leads to production entirely independent of market conditions. Owners who would prefer to conserve their underground supplies for a better price feel themselves forced to produce and sell today, lest they have no oil to sell tomorrow. Hence, prices are forced down to ruinous figures, entailing not only money loss on all persons having oil to sell—those outside of the particular competitive field as well as those within it—but also the waste which always accompanies the utilization of commodities sold at an unnaturally low price.

A striking illustration of the wastes arising from unrestricted competition occurred in the east Texas field in 1931. This region, a vast area of 120,000 acres, was solidly leased up mostly to small operators and newcomers in the business and among them numerous promoters of stock-selling schemes. So much of the region was held in small parcels ranging from 1 acre up, and ownership was so diversified, that it was impossible to bring about coordinated action or orderly development. Production mounted rapidly. The average for February 1931 was 26,062 barrels per day; for March, 93,579; for April, 249,325. The peak was reached in August when for two days (August 15 and 16) the daily output was over 1,000,000 barrels. At this point Governor Sterling stepped in. Martial law was declared and National Guard troops were ordered into the field to shut in the wells. Since August 17, when the State government intervened, the output has been kept somewhat under control.

A group of operators met at Tyler on August 6, and again on August 14 and voiced an opinion in favor of a general shutdown. A committee waited on the governor and on August 17 the order for shutting the wells and calling out the National Guard was issued.

The whole matter was taken to the Supreme Court of the United States and the action of the Governor of Texas was held to be unconstitutional.[17]

All of the wastes which have been referred to as an incident to unrestricted competition developed in the east Texas field. There were many oil well fires and other serious accidents. Two of the fires cost a dozen lives. One well burned for 26 days before it was brought under control. As a result of the frantic struggle for precedence in oil recovery insecure construction and inferior equipment were inevitable. Many derricks were constructed of green lumber. In the drying process nails and bolts were pulled out and the derricks gave way under the stress of pulling casing or doing other heavy work. Improper completion of wells was the cause of a majority of the fires, and the railroad commission was compelled to issue rules and regulations in regard to completing wells, introducing safety features, and eliminating risks which operators were taking in order to save money. Millions of tons of secondhand material and equipment —some of it unusable—was moved into the district from other fields in Texas and other States, and used in the place of new and safer equipment. This was a source of other accidents and fires. It was a boon to oil-field workers when operators were forced to start purchasing new equipment.[18]

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[17] Decided by Supreme Court. *Sterling* vs. *Constantin*, No. XI; October Term, 1932. U. S. Supreme Court, Lawyers Edition 77, page 254.

The effects of unrestricted competition in the east Texas field did not end with the losses of the operators and the accidents to the workers. It meant a considerable depletion of our oil reserves, demoralization of the industry, and the wastes in utilization that accompany an unnaturally low price. The matter was clearly one of national concern. The importance of the east Texas oil field in relation to the total oil production of the United States can be inferred from the following table and diagram:

United States production of petroleum, 1924–1931, by States

[In thousands of barrels]

State	1924	1925	1926	1927	1928	1929	1930	1931	Number active wells, December 31, 1931	Daily average per well (barrels)
California	230, 063	230, 147	224, 117	230, 751	231, 983	292, 037	226, 092	188, 829	8, 911	58. 07
Oklahoma	176, 206	173, 270	177, 651	276, 022	247, 501	252, 229	216, 115	175, 704	58, 707	8. 20
Texas	135, 361	144, 783	172, 545	220, 031	255, 354	298, 713	292, 392	328, 609	22, 431	40. 14
Arkansas	48, 168	78, 407	58, 730	40, 411	32, 138	25, 444	20, 115	15, 626	3, 231	13. 25
Kansas	29, 672	38, 152	41, 347	41, 944	38, 150	40, 658	42, 123	38, 956	16, 708	5. 71
Wyoming	39, 251	29, 229	25, 466	20, 984	21, 403	19, 072	17, 740	14, 692	3, 536	11. 38
Louisiana	20, 638	21, 538	24, 283	24, 331	22, 863	21, 137	23, 881	22, 857	2, 976	21. 04
Illinois	8, 041	7, 862	7, 770	6, 873	6, 475	6, 356	5, 651	4, 717	15, 300	. 85
Pennsylvania	7, 529	7, 831	8, 971	9, 642	9, 914	11, 805	12, 918	11, 862	77, 300	. 42
Ohio	6, 797	7, 175	7, 307	7, 542	7, 105	6, 730	6, 483	5, 318	37, 250	. 40
Kentucky	7, 397	6, 770	6, 297	6, 590	7, 350	7, 821	7, 462	6, 490	15, 700	1. 13
West Virginia	5, 924	5, 780	5, 962	6, 033	5, 746	5, 609	5, 111	4, 477	15, 200	. 81
Montana	2, 786	4, 123	7, 745	5, 172	3, 999	3, 827	3, 204	2, 847	1, 429	5. 46
New York	1, 482	1, 660	1, 934	2, 237	2, 579	3, 346	3, 854	3, 395	14, 710	. 63
Colorado	392	1, 172	2, 776	2, 723	2, 744	2, 362	1, 624	1, 493	244	16. 76
New Mexico	82	1, 097	1, 696	1, 214	974	1, 803	10, 377	15, 360	441	95. 43
Indiana	936	828	785	852	1, 054	906	990	831	2, 480	. 92
Tennessee	6	23	44	62	50	20	20	7	------	------
Michigan	------	------	103	436	613	4, 391	3, 589	7, 733	550	18. 59
Miscellaneous	------	------	31	------	------	------	------	------	------	------
Total	720, 731	759, 847	775, 560	903, 850	897, 995	1, 004, 266	897, 741	845, 803	299, 104	7. 75

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[18] Authority for statements about east Texas field, from Oil and Gas Journal, Jan. 28, 1932, McIntyre, James, East Texas Depressed Whole Industry, p. 56; and Bredberg, L. E. Year's Record of World's Greatest Oil Field, p. 58.

The table and chart are presented not only as throwing light on the point at present under discussion but as matters of general interest, showing, as they do, the relative position of the States in petroleum production and the upward or downward trends of the industry in each of them. It will be noted that the States upon which reliance for the great bulk of our oil supply must be placed are Texas, California, and Oklahoma, and that of these three Texas has shown the most rapid rate of increase and is at present furnishing by far the greatest output. The States standing next to the three giants are Arkansas, Wyoming, Kansas, Louisiana, Illinois, and New Mexico. However, the output of these and of all the other oil-producing States, individually or even collectively, is small compared with that of Texas alone. (The 1931 production of all of the States outside of Texas, California, and Oklahoma was 152,661,000 barrels; that of Texas alone 328,609,000 barrels.)

Referring now to the table and chart it will be seen that while nearly all the States showed a decline in output for 1931 as compared with 1930, Texas showed an increase of 36,217,000 barrels—an increase greater than the total production of any other State except California, Oklahoma, and Kansas. This increase came from the east Texas field, as production in other Texas fields was normal. Production in Texas rose from 48 percent of the production of all other States in 1930 to 63 percent in 1931.[10]

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[10] The only States outside of Texas showing any increase in 1931 were New Mexico (10,377,000 to 15,360,000 barrels) and Michigan (3,589,000 to 3,733,000 barrels).

From these figures the national importance of the competitive situation in east Texas can easily be seen. Even in normal times such an increase could not have failed to have had far-reaching effects. Coming, as it did, in a period of general business depression, the effect was greatly augmented. The price of crude petroleum which had been about a dollar a barrel rapidly declined until August 12 when it touched low level of 13 cents a barrel and even lower.[20]

The low price, which was a loss to owners and operators, was a benefit to consumers. From a national standpoint and from the standpoint of the economic philosophy underlying the theory of competition it may seem a matter of no concern that one class of the community should gain at the expense of another. From the standpoint of conservation, however, it is a matter of concern. The throwing of such a vast quantity of petroleum on

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[20] In a recent address before the Texas Oil and Gas Conservation Association at Forth Worth, Tex., Jan. 9, 1933, C. B. Ames, president of the American Petroleum Institute, said:

" There are approximatly 350,000 oil wells in the United States producing an average of one or two barrels a day. These may be referred to as wells of settled production. It is clear that in the public interest these wells should be preserved. They will continue to produce for many years, but if they are abandoned the oil they produce may be lost on account of the difficulty and expense of restoring the wells. A sound conservation program calls for the preservation of this supply, and these wells of settled production should be allowed to produce without restraint."

The institute made an analysis of crude oil production for the month of June 1931, " to show the number of wells required to produce certain approximate portions of and the

the market and the consequent slump in price meant a wasteful present use and a more speedy depletion of oil reserves. Another large pool may be discovered in one of the States at any time. If it should be in Texas, the waste would not be as great as in 1931, because of the increased power of

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total average production of the United States during the period covered." This tabulation follows:

Approximate daily production	Actual production	Number of producing wells	Average production per well per day
Barrels	*Barrels*		*Barrels*
500, 000	500, 649	1, 187	422
750, 000	737, 109	2, 212	333
1, 000, 000	1, 011, 063	3, 875	261
1, 100, 000	1, 105, 028	4, 637	238
1, 200, 000	1, 223, 061	5, 909	207
1, 300, 000	1, 292, 605	6, 758	191
1, 400, 000	1, 404, 965	8, 356	168
1, 500, 000	1, 504, 448	10, 000	150
1, 600, 000	1, 601, 365	11, 804	136
1, 700, 000	1, 709, 407	14, 593	117
1, 800, 000	1, 804, 558	17, 913	101
1, 900, 000	1, 899, 209	22, 875	83
2, 000, 000	1, 996, 325	30, 313	66
2, 100, 000	2, 100, 902	41, 546	51
2, 200, 000	2, 199, 761	56, 734	39
2, 300, 000	2, 297, 786	84, 891	27
2, 400, 000	2, 353, 156	137, 066	17
2, 500, 000	2, 462, 756	319, 385	8

Recent forecasts by two expert committees, appointed by the Federal Oil Conservation Board and by the American Petroleum Institute, indicate that during the first quarter of 1933, the total production of the United States should not exceed 2,000,000 barrels per day. A reference to the foregoing table shows that at the rate of production in June 1931, the requirements of 2,000,000 barrels per day could be met from the production of somewhat more than 30,000 wells. In the absence of control of production, through conservation measures, over any extended period it is evident that the uncontrolled flush production of about one-tenth of the wells would force the abandonment of a considerably greater number of pumping wells in the older fields. The preservation of the supply of oil from these smaller wells clearly indicates the importance of conservation control.

the Texas Railroad Commission to enforce conservation laws.

The wastes so far considered arise in connection with the production of petroleum. Wastes—or at least the possibility of a wiser conservation—arise in connection with its utilization.

Crude petroleum, as was stated, is a complex mixture of a considerable number of hydrocarbons of varying volatility. The most volatile is the natural gas which at once separates itself from the petroleum when the pressure is released by the tapping of the "pool." The liquid petroleum after recovery is run into stills where it is subjected to increasing heat. At a comparatively moderate temperature the most volatile component is expelled, and as the heat increases components of decreasing volatility are obtained. In this way the crude petroleum is made to yield several hundred distinct substances—gasoline, kerosene, lubricating oil, fuel oil, and other products—each having its appropriate use or uses.

By the process of straight distillation these components of the crude petroleum are thrown off in more or less stable proportions:[21] Hence, if the matter ended here, it would follow that a strong demand for one of the joint products would lead to the distillation of so great a quantity of crude oil as to yield a serious over-production of others. Fortunately, however, the several hydrocarbons have a family resemblance, and it has been found possible by a process known as "cracking" to break up the more complex molecules of which the heavier and less volatile components are composed and recompose them into the molecules of the lighter components. Hence, there is considerable range in proportions for practically all the components. This is shown by the following table:[22]

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[21] Crude petroleums from different regions vary considerably in their composition. Some are richer in the lighter and some in the heavier hydrocarbons. For example, the petroleums from the two principal Mexican fields are quite different, "The northern, or Panuco field, producing a heavy, viscous petroleum of 10° to 13° Baumé gravity; and the southern, or light oil field, producing a lighter petroleum of 19° to 22° Baumé gravity, more suitable for refining than the heavy crude of the northern field."—(Pogue, Joseph E., The Economics of Petroleum, 1921, p. 320.)

	Percent		*Percent*
Motor fuel	28. 7–60. 0	Wax	0. 2– 0. 5
Kerosene	7. 5–25. 0	Asphalt and road oil	2. 7–15. 0
Gas oils	3. 9–50. 0	Coke	0. 5
Diesel engine oils	1. 7–70. 0	Marine fuels	13. 4–80. 0
Lubricating oils	3. 7–20. 0	Land fuels	34. 5–80. 0

It is possible, therefore, so to apportion the components of the crude petroleum as to regulate the supply with reference to demand. If private business is left to its own devices, this adaptation will automatically adjust itself on a profit basis. That is, the refiner will so adjust his runs of crude oil through cracking units, at current prices, so to yield a maximum net income. If there were no acute problem of conservation, such an adjustment would be regarded as satisfactory. But since the problem of conservation is acute, a question of public interest as distinguished from private interest may arise. Fairly satisfactory substitutes are much more available for some of the components than for others. Marine and land boiler fuel can and will be replaced by coal when the petroleum supply is exhausted. Kerosene is already being rapidly replaced by electricity for lighting, and road oil by concrete. The problem of a satisfactory substitute for motor fuel is not so easily solved.

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[22] **Source of table, Davison, George S., President Gulf Refining Co., paper read at the Federal Oil Conservation Board Hearings. Feb. 10, 11, 1926.**

The question arises whether the conservation of our oil reserves is of sufficient moment to warrant Government intervention in the apportioning of products. For example, should the Government require that of the total output of petroleum the proportion allocated to the not easily replaceable gasoline should approach the maximum (60 percent) while the percentages of the more easily replaceable components should approach the minimum. The matter, however, does not end here. There would be no conservation if the Government simply fixed the proportion—rather the reverse. If the same total quantity of crude oil were taken from the reserves, such an allocation would have the effect of flooding the market with gasoline, which would then sell at a ruinously low price and be wastefully used. Moreover a great many of the smaller refineries are not equipped to utilize the more elaborate processes that such a high yield of gasoline implies. If conservation be the end in view of Government intervention, the total output as well as the allocation of components would have to be brought under control.

The subject is full of difficulties. Government intervention is likely to be cumbersome, irritating, and not always effective. In this case, if such intervention is to be of any avail, action by the Federal Government would seem to be called for; and questions of the constitutional powers of the Federal Government would at once arise. Doubtless, however, all these difficulties might be overcome. It is a case of balancing evils. Do the exigencies of the petroleum situation warrant the efforts necessary to secure effective Government control?

It is worthy of note that, to a certain extent, the allocation proposed has been self-adjusting under the action of ordinary economic forces. The following figures show the percentages of the total quantities of crude petroleum (domestic and imported) running to the stills, which have been allocated to the principal products for the years specified:

Allocation of crude petroleum to principal refined products, 1916–1930

[In millions of barrels and percentages]

Crude petroleum run to stills				Chief petroleum products							
Year	Domestic	Foreign	Total	Gasoline		Kerosene		Gas and fuel oils		Lubricants	
				Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percen
1918			326.0	85.0	26	43.5	10	174.3	53	20.0	6
1919			361.5	94.2	26	55.7	15	181.6	50	20.2	6
1920			433.9	116.2	27	55.2	13	211.0	49	24.9	6
1921			443.4	122.7	27	46.3	10	230.1	52	20.9	4
1922	435.0	65.7	500.7	147.7	29	54.9	11	254.9	51	23.3	5
1923	538.2	43.0	581.2	179.9	31	55.9	10	287.5	49	26.1	4
1924	598.0	45.8	643.8	213.3	33	60.0	9	320.5	50	27.5	4
1925	698.6	41.3	739.9	259.6	35	59.7	8	365.0	49	31.1	4
1926	734.3	45.0	779.3	299.7	38	61.8	8	365.2	47	32.3	4
1927	778.7	50.1	828.8	330.4	40	56.1	7	393.1	47	31.7	4
1928	835.7	77.6	913.3	376.9	41	59.3	6	427.2	46	34.7	4
1929	912.2	75.5	987.7	435.1	44	55.9	6	44.9	45	34.4	3
1930	866.6	60.8	927.4	436.2	47	49.2	5	373.2	40	34.2	3
1932					44		5		36		

Source: World Almanac, 1932, p. 358.

It will be seen that the percentages going to gasoline, the least replaceable of the products, have steadily and rapidly increased, while the percentages going to the more replaceable products, especially kerosene, have shown a marked downward trend. It is doubtful if a more satisfactory result would follow the most vigorous and irritating regulation by Government.

From the foregoing statement it would appear that the conservation of our petroleum reserves is a matter of serious national concern. What the future may have in store in the way of discovery and invention is conjectural. By hydrogenation, it is possible to make by volume more than 100 percent of gasoline from crude oil. Twenty percent of the motor fuel in Germany is now supplied by hydrogenation of low-temperature distillation of brown coal.

It is feasible to produce gasoline from coal in the United States at prices which the public would pay at perhaps as low as the prices of 10 years ago. The oil shales of the West contain large amounts of oil which can be recovered by distillation, and various processes are available for converting coal into oil, but these alternatives involve higher prices than we have been accustomed to pay. It is also conceivable that some other source of energy as well adapted to our needs as petroleum may be forthcoming. We do not know. But this we do know, that at the present time, with the present stage of advance of the arts and sciences, deprivation of petroleum would be a very serious blow to our national prosperity, if not to our national security. And this we further know, that the years of grace appear to be limited. Just how long it will be before the petroleum reserves of the United States are exhausted is uncertain. It will depend somewhat upon the care exercised in their conservation. But it will not be long, as time is reckoned in the history of nations. And when our own reserves are depleted, even if other countries, exercising more foresight, have husbanded theirs, we cannot expect them to be so simple as to surrender them to us for the strengthening of our air fleet and motor-truck service.

Conservation, therefore, should be prominent in the agenda of State legislatures and the Congress, and in the minds of the leaders of the industry. Their interest, at least their long-run interest, is at one with that of the Nation in this respect.

Two main lines of action are indicated—conservation in use and conservation in production.

CONSERVATION IN USE

One possibility for economy has already been suggested. The output may be restricted to the quantity necessary to supply the least replaceable uses. The process of cracking as was shown, makes possible a considerable range of choice in the final destinations to which the crude petroleum is put. How such restriction is to be put into effect is a difficult problem, but probably not insoluble, if the exigency of the situation be deemed sufficiently imminent. This line of action, if undertaken at all, would probably call for Federal intervention. Such legislation would regulate refinery operations rather than producing operations. Refining is done very largely in States which do not produce crude oil or which produce less crude oil than is refined. This is due to the practice of shipping crude oil by pipe lines and tankers to consuming centers rather than refining it locally where the crude oil is produced. State legislation would be insufficiently comprehensive, and the private interest of the owners and operators is not sufficiently apparent.

A second economy lies in the direction of scientific discovery and invention with a view to securing the maximum possible return in energy from every gallon of gasoline or oil consumed. It is estimated that the ordinary automobile utilizes only some 3½ percent of the energy theoretically lodged in the gasoline.[23] Even now devices have been invented which would considerably increase this percentage, and there would appear here to be an important field for further invention. Motor fuel is one of the most important and least replaceable of the derived products of petroleum. A doubling of the percentage of the theoretical energy actually utilized would be a long step in the direction of conservation.

CONSERVATION IN PRODUCTION

Attention has already been called to the enormous wastes of oil from premature and irregular encroachment of salt water and from the escape into the air of the natural gas that accompanies and causes the flow of petroleum from the sands. Such escape of gas, as was pointed out, is not only a direct loss of the energy embodied in it but is also an indirect loss from the oil which it might have propelled to the surface but did not, because it was permitted to escape. Barring accidents, the occasional occurrence of which seems a challenge to human foresight, all of these wastes should be eliminated.[24]

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[23] Kettering, C. F., general manager research division, General Motors Corporation, Hearings, Federal Oil Conservation Board, p. 42.

[24] Suman, John R., Petroleum Production Methods. 1921, pp. 227–233.

The fourth report of the Federal Oil Conservation Board devotes considerable space to the subject of pipe lines for conveying natural gas. It is shown that gas can now be conveyed to such great distances and that it is of such value for heating and as a source of power that private interest would seem to dictate every effort to prevent the wasteful escape into the air. But if private interest cannot be relied on to eliminate these wastes from "gushers" and from the escape of natural gas there would seem to be here a field for Government intervention. I believe that the States can adequately police the fields within their respective jurisdictions. The Federal Government might cooperate by lending technical assistance upon request of a State authority.

In the fourth report, however, chief emphasis is given to the wastes from unrestricted competition. The wastes from this source in the east Texas field have already been described. In the judgment of the board unit operation is imperative; that is, that a number of owners whose properties lie over a "pool" should operate as a single owner in some manner sharing in the expense and profit of operation. In general it may be said that it is for the interest of the owners as well as for the public in conserving its oil reserves that such cooperation should be effected. Yet the situation is such that a single owner who refuses thus to cooperate is in a position to make cooperation by the others unavailing. He may lawfully drill a well on any part of his property and appropriate all the oil and gas that he can get from it, notwithstanding the fact that much of the oil and gas thus appropriated lay under his neighbors' property, and hence under the generally accepted definition of property in real estate would seem to be their property. The case is further complicated by the question of the legal right of the owners to cooperate. If the competitors are engaged in interstate commerce would such combination come under the condemnation of the Sherman Antitrust Act? If not, would the combination come under the condemnation of the common law as a conspiracy in restraint of trade? Can the Government intervene and compel unit operation, or, as in the Texas case, use military force to prevent wasteful competition without violating the constitutional provision against taking property without due process of law?

There are many legal difficulties, but undoubtedly they can be untangled. The powers that make laws or even constitutions can unmake them when the case seems sufficiently pressing. President Coolidge in his letter of December 19, 1924, constituting the Federal Oil Conservation Board, pointed out the impossibility of conserving "oil in the ground under our present leasing and royalty practices, if a neighboring owner or lessee desires to gain possession of his deposits."

In its fourth report the board urges that "The natural unit in oil deposits is a single pool, large or small, and that unit operation is nothing more than accepting nature's decree." It shows that the delimitation of property rights by fences, walls, and the like, however satisfactory in the case of fixed substances like ore or stone, is entirely unsatisfactory in the case of fluids, and concludes that "what is needed now to effect this conservation movement is specific recognition by the courts of the community of interests of all landowners in the control of the oil or gas pool, in the oil and gas as separate marketable commodities, and in the energy of the gas—the pressure so easily dissipated but so essential to an adequate recovery of the oil included in the minute pores of the sand or sandstone that forms the reservoir."

It points out that much progress has already been made in unit operation but shows that much yet remains to be done. It would seem desirable, in view of the gravity of the situation and the fact that irretrievable wastes of our oil reserves are likely to occur from competitive operation, that whatever is to be done be done quickly.

The facts brought out by this study show that the oil situation involves questions of deep national concern—questions which call for cooperation among leaders in the industry with representatives of the State and Federal Governments to secure conservation of this, one of our most important natural resources. They do not, however, suggest the need of panic or undue alarm. With cooperative action looking to conservation, with improving technique and advancing science in the matter of deeper drilling, more complete recovery of the deposits, and with continued progress in oil geology directed to the study of new deposits, it seems probable that our oil reserves will meet our requirements for many years.

It is possible to forecast for a year in advance the approximate market requirements of the United States as a whole for petroleum and petroleum products. Under present arrangements after such market requirements have been ascertained it remains for each oil-producing State to decide for itself what share of the total it should supply. After each State has decided what its share of the total should be, it then, under its proration and conservation laws, may allocate this amount to the various oil pools within its jurisdiction. If the individual oil-producing States are fair in their findings as to how much of the total market requirements of the country the given State is entitled to supply, it will be possible for the States to stabilize the production of the flush wells so as to enable the "stripper" wells to continue on pump. If the individual States with the largest producing oil pools substantially overestimate the proportion of the market requirements which a given State for a year should supply, then overproduction of the flush wells under conditions such as obtained in the years 1931–32 might bring down the price of crude oil below where it would be profitable to operate many "stripper" wells.

There are approximately 350,000 wells in the United States producing on an average of 1 to 2 barrels per day. These wells will continue to produce for many years unless they are abandoned. If they should be abandoned on account of the low price of crude oil, the difficulty and expense of restoring the most of them would be prohibitive. A sound conservation policy requires that these wells be permitted to operate continuously. Otherwise much oil would never be brought to the surface, which will be recovered if these "stripper" wells are permitted to run their course without premature abandonment. From 30,000 of the most productive wells the annual requirements of the United States can be supplied; but to run the newer and stronger wells at a full capacity would mean the abandonment of many of the wells which have to be pumped.

Proration measures are being passed in the States with a view to controlling the output of flush production so that there may be no interference with the wells that are being pumped. If the individual States fail to hold down production in new fields under present conditions, the price of crude oil will force the abandonment of thousands of "stripper" wells.

Compacts between the States with the most productive oil pools may be necessary. If the States will not enter such compacts, and if they persist in overestimating the amount of the annual market requirements which particular States should supply, then there is no way to control production and preserve the thousands of wells that are being pumped except by action of the Federal Government. The States can handle the problem if they will enact and enforce laws with a view to its solution. It remains to be seen how successful they will be in controlling producers within their respective jurisdictions in the interest of conservation throughout the oil-producing areas.

The consumers of oil products for the most part reside in States in which the oil pools are not located. It is to their interest that oil be produced under such conditions as will ultimately lead to recovery of as much oil as possible. If the oil-pro-

ducing States fail in their efforts at conservation, then the oil-consuming States may have to act through the Federal Government to stabilize oil production and conserve oil resources.

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RECENT CHANGES IN PIPE-LINE FACILITIES

At the present time three States—Oklahoma, Texas, and California—produce approximately 82 percent of all crude oil taken out of the ground in the United States. In 1930 the Midcontinent output was 66 percent of the total, the California 25 percent, and the Rocky Mountain 4 percent. There is left only 5 percent of the total production to occur in all States east of the Mississippi River, though in this area are found 70 percent of the population, 70 percent of the automobile registrations, and 70 percent of the gasoline consumption.[25] A leading problem confronting the oil industry is therefore that of finding the most economical means of laying down in the great middle west and eastern markets refined products derived from Midcontinent crude. The alternatives are to bring the crude oil by pipe line or by a combination of pipe line and tankers to refining points in the market areas or to refine the oil in the area of its production and move the refined products to the distant markets.

There are many questions other than those of transportation to be faced in choosing between these alternatives. The relative refining costs in the different areas and the disposition to be made of certain of the refinery by-products, where refining is done at points remote from the large manufacturing or consuming centers, illustrate such questions. For the purpose of this report, however, attention can be confined to the transportation aspects of the problem.

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[25] These figures are taken from the testimony of Chas. E. Bowles at hearing on H. R. 16695, Pipe Lines, Feb. 17 and 18, 1931, pp. 11 to 14.

The factors entering into transportation costs have materially changed in recent years, particularly with the development of pipe lines suited to the transportation of gasoline and other refined products and of more economical methods of pipeline construction. Companies whose transportation program was based on earlier cost factors have therefore had to effect adjustments to the changed situation, as by relocating their refineries or changing their refinery schedules, by constructing gasoline lines or converting oil lines to gasoline lines, or otherwise. The accompanying general pipe-line map shows the collective layout of oil and gasoline pipe lines at the present time and the use made of boats from the Gulf to East Coast points, between points within the Gulf area, and from California. The individual maps which accompany the group reports, by isolating the lines and refineries of each group, indicate the choice now in evidence between the alternatives indicated. This choice is not clear-cut in the case of certain of the companies whose field of operation is so large that their transportation program is a composite of types. A brief characterization of some of the leading cases will clarify the discussion.

Mention should first be made of lines in the old eastern field. Many of the lines constructed in the early period when the Appalachian field, especially Pennsylvania, contributed the bulk of the oil of the country, are still in operation. These lines were extended westward as the area of production shifted in that direction, making connection with lines constructed from the Midcontinent field as that area emerged as the most important area of supply. With the development of tanker movements of crude oil and refined products from the Gulf to the East and subsequently from California came a period of difficulty for the lines holding themselves out as parties to the movement of oil from the Midcontinent fields to the east coast and to refinery centers in western Pennsylvania and New York. The present rates of such lines reflect the absorptions they have had to make to prevent further diversions of oil.[26] As is pointed out shortly, the lines embraced in the so-called "Northern" and "Southern" groups, together with the National Transit Co., are not attached to any group of oil companies and hence are practically unique in the pipe-line field to-day.[27]

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[26] P. LXXIII. One or two such lines now transport crude oil to interior refineries, which has been moved to the east coast by tanker, and others are used for the movements of refined products.

[27] The explanation lies in the fact that these lines were separated from Standard Oil properties in the dissolution of 1911. P. XXXVI.

4. Bureau of Mines, Monthly Petroleum Statement, January, 1934:

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Production of crude petroleum by States and principal fields

(Thousands of barrels of 42 gallons)

	January 1934		December 1933		January 1933	
	Total	Daily average	Total	Daily average	Total	Daily average
Arkansas	956	31	942	30	943	30
California:						
Kettleman Hills	1, 597	52	1, 656	54	1, 795	58
Long Beach	1, 806	58	1, 896	61	2, 125	69
Santa Fe Springs	1, 283	41	1, 307	42	1, 694	55
Rest of State	9, 477	306	9, 867	318	8, 846	284
Total California	14, 163	457	14, 726	475	14, 460	466
Colorado	87	3	77	3	88	3
Illinois	393	13	378	12	297	9
Indiana:						
Southwestern	72	2	69	2	48	2
Northeastern	--------	--------	--------	--------	1	--------
Total Indiana	72	2	69	2	49	2
Kansas	3, 407	110	3, 470	112	2, 933	95
Kentucky	362	12	385	12	438	14
Louisiana:						
Gulf coast	1, 351	44	1, 358	44	1, 036	33
Rest of State	852	27	768	25	876	29
Total Louisiana	2, 203	71	2, 126	69	1, 912	62
Michigan	822	27	945	30	4 47	14
Montana	222	7	199	6	169	5
New Mexico	1, 319	42	1, 277	41	1, 003	32
New York	306	10	298	10	253	8
Ohio:						
Central and eastern	269	8	255	8	273	9
Northwestern	89	3	79	3	86	3
Total Ohio	358	11	334	11	359	12
Oklahoma:						
Oklahoma City	5, 589	180	5, 932	191	3, 221	104
Seminole	3, 311	107	3, 308	107	3, 404	110
Rest of State	6, 318	204	5, 968	193	5, 857	189
Total Oklahoma	15, 218	491	15, 208	491	12, 482	403
Pennsylvania	1, 152	37	1, 077	35	974	32
Tennessee	1	--------	--------	--------	1	--------
Texas:						
Gulf coast	4, 913	158	4, 873	157	3, 814	123
West Texas	3, 994	129	3, 931	126	4, 960	160
East Texas	13, 989	451	13, 901	449	10, 447	337
Rest of State	6, 790	219	6, 619	214	6, 665	215
Total Texas	29, 686	957	29, 324	946	25, 886	835
West Virginia	340	11	326	11	294	9
Wyoming:						
Salt Creek	524	17	558	18	666	22
Rest of State	385	12	341	11	344	11
Total Wyoming	909	29	899	29	1, 010	33
United States total	71, 976	2, 321	72, 060	2, 325	63, 998	2, 064

5. Minerals Yearbook 1932–1933, Statistical Appendix:

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Producing oil wells

State	Approximate number, Dec. 31, 1932	Average production per well per day (barrels)
Arkansas	2,880	10.7
California	8,900	54.7
Colorado	190	15.9
Illinois	15,170	.8
Indiana:		
Southwestern	1,140	1.9
Northeastern	365	.2
Total Indiana	1,505	1.4
Kansas	18,300	5.1
Kentucky	13,510	1.3
Louisiana:		
Gulf Coast	390	83.5
Northern	2,660	10.2
Total Louisiana	3,050	19.1
Michigan	645	29.6
Montana	1,420	4.7
New Mexico	490	74.0
New York	17,680	.5
Ohio:		
Central and eastern	20,640	.5
Northwestern	13,890	.2
Total Ohio	34,530	.4
Oklahoma	57,100	7.4
Pennsylvania	80,380	.4
Texas:		
Gulf Coast	2,740	42.9
East Texas proper	9,400	51.3
West Texas	3,090	57.0
Rest of State	28,400	8.2
Total Texas	43,630	21.0
West Virginia	18,850	.6
Wyoming	3,200	11.1
Other	(1) 70	
	321,500	6.7

[1] Alaska, Missouri, Tennessee, and Utah.

6. American Institute of Mining and Metallurgical Engineers, *Petroleum Development and Technology, 1931,* Swensrud, Economics of Distribution in the Oil Industry:

The economics of distribution in the oil industry cannot be regarded apart from the general economics of the industry as a whole. The attempt to regard them as separate has led many people into the fallacy of believing that the responsibility for the apparent evils in the marketing end of the business lay entirely at the door of the marketing end. Such a view fails to take cognizance of many underlying factors; we can only expect to understand the distribution economics of the industry if we understand its general economics. We must realize also that the oil industry today is essentially the gasoline industry.

The oil industry may be said to have begun about 60 years ago. At the outset it was concerned chiefly with the manufacture and sale of kerosene, lubricating oils, and greases. Gasoline was then a most obnoxious byproduct. The early oil-marketing company was engaged almost exclusively in refining and marketing—it did not concern itself with production but bore the relation to it merely of a purchaser. It may be said that the urge of marketing development in those days, therefore, came from the refining and marketing end of the business. The raw material had not yet begun to exert its enormous pressure, nor had the producer of crude oil acquired a direct interest in the sale of the ultimate finished products.

Since then great changes have taken place. With the development of the automobile came a vast new demand for the raw material from which gasoline could be made. No longer could the refining and marketing companies be indifferent to the source of that raw material, particularly in view of the pessimistic outlook then presented as to the probable quantity of oil in existence. And despite the complete overturning of those early estimates, made before the bounty of nature and the skill of geologists and mining engineers had revealed themselves in undreamed of reserves of crude oil, the motive of the large marketer to integrate back to the crude still constitutes a strong force. The need of uniform and assured quality, made the more necessary by intensive advertising, tends to force him into refining. Then it may seem expedient for him to secure production in order to protect his refining and marketing position, although often he is merely attracted by the hope of reaping a profit on the raw material for which the sale of his finished product and his refining position give him a justifiable use.

The production of crude, however, was not in the beginning and never has been confined to refining and marketing companies. Many companies began at the production end. The abundance of crude of which many of these companies found themselves possessed has in turn, however, exerted upon them a powerful pressure to engage in refining and marketing activities in order to obtain for their production a more assured outlet. It is sometimes difficult or impossible to sell crude oil as such, but there is almost always a possibility of selling gasoline, at some price. So the producer of crude becomes a refiner; then, as he still finds it difficult to dispose of all his gasoline at wholesale for a decent price, he tends to push on into the retail marketing end in order to obtain that final utopia of assured outlets.

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For few commodities probably are prices less understood than for gasoline. Legislators and editors frequently feel that laws should be passed about them, apparently on the general theory that what is a mystery to them ought to be dealt with by law. People express great amazement that the price of gasoline at one point should differ sharply from that at a nearby point. Likewise, they see something mysterious if not sinister when practically all major companies raise or lower their posted prices simultaneously. Beneath these surface indications regarding price are some simple and some rather complicated economic factors.

The general level of gasoline price is fundamentally determined by the interaction of gasoline demand and crude-oil supply. In a very narrow and short-term sense, the price of gasoline reacts to the supply and demand factors for gasoline alone, but in our industry the rapidity with which crude oil can be converted into gasoline makes the supply of crude the dominant factor. The facts bear out this statement, for over a period of the last 12 years there never has been a major change in the trend of wholesale gasoline prices that was not followed shortly by a change in the same direction in crude oil. The statement just made that changes in crude-oil prices follow changes in wholesale gasoline prices is a true statement of the actual sequence. It is a logical sequence because the wholesale gasoline market is an extremely sensitive one, whereas the market for crude oil is rather sluggish, owing to the physical necessity, in general, of pipe-line connections with a specific buyer. It is not a market in which buyers and sellers can meet openly on equal terms and engage in that "higgling and bargaining" which are the essentials of a market in which the forces of supply and demand can rapidly and continuously be balanced in terms of price. This simply means that the wholesale gasoline price, being more sensitive, tends to reflect sooner those supply and demand factors to which the price of crude must later respond.

The retail price of gasoline, as has been mentioned, tends to lag behind the wholesale price because there is less higgling and bargaining by the retail buyer, and perhaps also because the inconvenience of fractional cent retail prices tends to cause a postponement of retail price changes until enough change in wholesale prices has accumulated to warrant a change of convenient amount in the retail price.

The close correspondence of retail gasoline prices and price changes among leading companies is the result of economic necessity and not of collusion. The commodity gasoline, to be sure, is bought to a considerable extent on the basis of brand, but the normally small differences in quality which usually have existed between the products of good companies, and the difficulty of readily apprehending the differences in a motor car, have made the customer, as a general rule, unwilling to pay more for his preferred brand than for the comparable brand of another company. Suppose, therefore, that today a certain leading marketer cuts the price 2 cents. No other representative company could afford not to cut, unless it were willing to risk losing much of its business. Likewise, on the upside, a leading company raises its price, say, 1 or 2 cents. In this case, if its competitors do not follow its lead it would have no option but to reduce its price back to their level or lose business. These factors practically compel all companies having reasonably comparable products and service to sell at the same retail price—the same thing is true of most other products we buy, with this difference however: A large portion of the public buys gasoline frequently; those buyers are mobile—being in their automobiles they can readily drive a little out of their way if any price advantage makes that desirable.

Then, too, gasoline is the principal product sold at a gasoline station, and prices usually are posted very conspicuously, especially if they are lower than the prevailing level, so that the opportunities for price comparison by the customers are almost unparalleled. These factors simply narrow down the time limit the various companies have in which to adjust their prices to prevailing levels, and any oil marketer knows that if a cut price is suddenly posted by a nearby competitor he begins to suffer serious and immediate loss of gallonage. The result is what may be called a follow-the-leader price custom among gasoline companies marketing on a comparable basis.

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It is usually accepted that there is nothing the oil marketer can do materially to affect the total gasoline consumption. His only hope is to secure a greater proportion of the existing demand.

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We may summarize the economics of gasoline marketing by reiterating that through it all the motivating force of crude oil pressing for a market can be seen. We have watched the mechanism for the exertion of that pressure develop from the stage when the pressure was relatively indirect, because production was not linked with refining and marketing,—to the present stage when a high degree of integration has made for an exceedingly direct conduit of the pressure, and when in addition the jobber and the tank-car service station have been developed to a point where they quickly adjust any unduly wide margins between delivered cost and retail prices.

We see the pressure for sales of gasoline breaking out in increased outlets, in various forms of price cutting and in increased marketing costs. With the growing integration of oil companies, more and more of the profits of other ends of the business are, the author believes, being pushed over into the marketing end, to be used there in the struggle for outlets.

7. National Petroleum News, June 1, 1932.—Holliday, *Narrower Margins Essential:*

[Pages 25-28]

The marketing end of the business cannot separate itself from the production and refining parts as though it were a separate industry. All three departments constitute one single industry, and economic effects usually are manifested first in the marketing end. Gasoline prices have been the barometer of fundamental economic conditions and reflect conditions not only in the marketing department but in the refining and producing ends.

It does not lie within the power of the marketing branch of the industry to control prices of finished products. In the absence of monopoly or governmental control or assistance, prices are made by markets and not by individuals, and markets reflect all of the subtle economic forces that are at work. * * *

Gasoline prices have been reflecting the fundamental overproduction: Overproduction of potential supply of crude oil, overproduction of potential refinery capacity, and overproduction of marketing facilities which resulted from overproduction of crude oil and refining capacity.

The production and refining ends of the business have not put their house in order, and cannot do so as long as the present law of oil and gas remains unchanged. The fundamental supply factor is not aboveground storage alone, but the total inventory of all products including the crude oil which lies below the ground and can be brought to the surface by the turning of a valve.

* * * * *

On account of the liquid nature of crude oil and the character of modern continuous refinery process, the potential supply of crude oil below the earth is part of the gasoline supply, and so long as the fear exists as to the possibility of the dam breaking which holds back that supply, the sensitive tank-car gasoline market will continue to be low. Even the supply of crude oil above ground is sufficient to keep prices depressed.

We lay so much stress upon the statistics of gasoline inventory, and seem to ignore the fact that crude-oil inventory stored above ground, to the extent of its gasoline yield, is practically the equivalent of a gasoline inventory, since it can be so quickly converted into gasoline. Even if we ignore potential supply, the inventory of crude oil above ground is approximately six times the total gasoline inventory, so that our real gasoline supply above ground is approximately four times as large as our gasoline inventory statistics would indicate.

In a time of scarcity or anticipated scarcity of potential production, or in a time when potential production is reasonably in balance with current demand, the crude-oil inventories above ground would constitute a reasonable reserve which would not necessarily enter into the supply factor; but at a time like the present, even if we ignore the potential supply below ground, the actual crude inventories in storage are in essence a part of our gasoline inventory and indicate a supply factor so large as to necessitate low prices in a free and open market. I do not mean to disparage the worthy effort to reduce gasoline inventory but merely am trying to emphasize that it is only one part of the supply factor.

This, in my judgment, is why, no matter what is done in the producing States in the way of maintenance of crude oil prices, the gasoline market continues to be low. Any company which attempts to take the high ground of ignoring markets and basing its gasoline prices upon posted crude-oil prices may do so if it pleases, but in doing so it will surrender the market to others; and a market once lost is not easily regained.

Gasoline prices have been the barometer of fundamental economic conditions because they are in a market which is open and free, and when crude oil prices have not synchronized with gasoline prices it has been because the crude-oil market is by nature more sluggish and subject to control, and has not reflected fundamental conditions.

In the last analysis the battle ground of this industry is in the marketing end, because the only purpose of producing a raw material is to supply the finished products which the marketing department can sell; and, therefore, the fundamental economic conditions of production must have their logical effect out on the marketing firing line.

* * * Gasoline produced from low-priced crude oil, however, and distress gasoline resulting from overproduction, forced itself upon the market in such quantity at price-cuts below these companies' cost, based on posted crude-oil prices, until in the last few years it has come to be recognized and practiced that retail prices must be based, not

upon current cost, but upon the wholesale tank car or cargo markets.

II. COSTS OF PRODUCTION AND AVERAGE PRICES RECEIVED

1. United States Tariff Commission Report to the House of Representatives on *Crude Petroleum and its Liquid Refined Products,* Report No. 30, Second Series [pp. 158–163]:

TABLE 86.—*Crude petroleum: Unit cost of production and unit sales price, by districts, 1927–1930*

GROUP I. LARGE COMPANIES

District	1927			1928			1929			1930			4-year weighted average	
	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Unit cost including interest on investment	Unit sales price
California:	*Barrels*			*Barrels*			*Barrels*			*Barrels*				
Long Beach, Seal Beach, Signal Hill	18,962,688	$0.60	$1.05	33,266,820	$0.62	$1.00	35,030,137	$0.55	$1.13	19,319,393	$0.65	$1.24	$0.60	$1.11
Santa Fe Springs	5,081,385	.71	1.18	6,223,159	1.59	1.22	49,583,200	.92	1.32	31,563,779	.88	1.42	.94	1.37
Redonda-Torrance	3,732,717	.89	1.11	2,825,232	.90	1.08	2,388,467	1.06	.87	2,864,138	1.18	.88	.99	1.00
Coalinga (light)	1,231,736	1.06	.83	482,082	2.05	.76	119,508	5.91	.60	1,673,197	1.55	.57	1.59	.64
Coalinga (heavy)	1,009,920	1.06	.76	997,334	1.15	.77	1,802,137	1.07	.54	864,769	1.10	.54	1.09	.63
Huntington Beach	5,026,280	.70	1.02	3,476,154	.82	.90	2,721,460	.92	.89	7,546,325	.57	1.10	.70	1.01
Kern River, Kern River Front, Mount Poso, Round Mountain	2,286,905	1.87	.79	2,021,495	1.78	.68	4,338,078	1.02	.51	6,035,868	.91	.54	1.21	.59
Elks Hills, McKittrick	1,310,503	.40	.81	1,234,808	.37	.80	1,087,598	.42	.66	4,373,375	.39	.73	.39	.74
Lawndale, Potreto, Rosecrans	1,105,752	1.06	1.57	857,593	1.68	1.52	1,100,388	1.53	1.70	1,177,085	1.20	1.84	1.35	1.67
Dominquez	3,481,436	.59	1.18	2,438,057	.87	1.12	1,983,329	.84	1.25	2,056,467	.72	1.34	.74	1.21
Beldridge, Lost Hills	1,197,385	1.09	.93	1,128,535	.96	.86	1,240,581	-------	.83	1,037,204	1.18	1.20	.73	.95
Ventura (Avenue)	13,649,364	.25	1.10	14,065,679	.50	.99	18,180,025	.60	1.14	15,349,756	.57	1.26	.49	1.13
Buena Vista, Maricopa, Midway, Sunset, Wheeler Ridge	10,769,904	.75	.71	8,857,218	.88	.89	8,313,770	.79	.79	14,246,210	.99	.99	.86	.86
Culver City, Inglewood, Montebello, Whittier	2,169,047	.63	.96	1,691,413	.76	.72	1,356,601	.95	.86	4,724,817	.53	.86	.65	.88
Arro Grande, Casmalia, Cat Canyon, Lompoc, Santa Maria	210,443	1.36	.95	195,788	1.33	.91	169,896	1.73	.91	182,424	2.34	.97	1.67	.93
Bardsdale, Conejo, Newhall, Ojai, Peru, Santa Paula	14,908	.98	.87	25,540	2.72	.85	70,957	1.48	.86	169,622	1.49	.97	1.57	.93
Brea-Olinda, Coyote Hills, East Coyote, West Coyote, Olinda, Richfield	6,418,932	.71	1.03	5,287,967	.74	.96	4,698,572	.85	.99	3,630,081	1.05	1.04	.81	1.01
Alamitos	256,143	2.83	.95	178,683	.72	1.01	1,144,396	.59	1.19	347,097	.95	1.30	.96	1.16
Kettleman Hills	-------	-------	-------	2,663	.26	1.00	639,204	1.50	1.50	4,891,885	.06	1.51	.23	1.51
Baldwin Hills, La Habra, Merced Hills, and all other	3,170,538	1.18	.93	2,472,406	1.18	.91	4,163,123	1.09	.83	8,843,356	1.03	.95	1.09	.92
Santa Barbara Beach fields	-------	-------	-------	572,174	1.20	1.44	7,896,239	.34	1.44	10,843,435	.38	1.40	.38	1.42
Total	81,085,986	.69	1.00	88,300,809	.81	1.01	148,027,656	.76	1.14	141,740,283	.75	1.18	.75	1.10

Texas:													
Panhandle	17, 920, 123	1. 52	1. 00	11, 635, 267	1. 30	1. 00	16, 909. 774	1. 00	1. 30	14, 100, 547	1. 01	1. 15	1. 21	1. 12
West Texas	25, 270, 941	. 89	. 76	71, 303, 584	. 59	. 63	78, 568, 927	. 46	. 78	69, 968, 787	. 56	. 79	. 57	. 73
North Texas	11, 613, 698	1. 77	1. 43	10, 986, 866	1. 50	1. 37	14, 813, 151	1. 25	1. 41	9, 740, 364	1. 31	1. 25	1. 45	1. 37
Mexia	8, 498, 240	1. 87	1. 45	5, 724, 868	2. 23	1. 38	4, 966, 783	2. 18	1. 43	10, 633, 184	1. 35	1. 16	1. 81	1. 33
Luling	5, 627, 182	1. 14	1. 10	4, 887, 200	1. 35	1. 04	13, 654, 963	. 93	1. 07	11, 578, 812	. 90	1. 02	1. 01	1. 05
North Central Texas	10, 735, 960	1. 66	1. 53	11, 851, 836	1. 29	1. 37	14, 134, 885	1. 23	1. 74	10, 339, 413	1. 19	1. 23	1. 33	1. 49
East Texas	29, 729	. 64	1. 45	30, 048	14. 27	1. 43	28, 113	7. 93	1. 47	26, 594	4. 07	1. 30	8. 30	1. 41
Southwest Texas	1, 014, 517	1. 57	1. 07	1, 213, 504	1. 35	1. 01	1, 350, 281	1. 40	. 87	3, 890, 967	. 96	1. 06	1. 18	1. 02
Iatan	510, 240	1. 34	1. 08	1, 060, 534	. 91	. 71	1, 022, 638	. 91	. 76	611, 444	1. 05	. 71	1. 00	. 79
Gulf coast	36, 532, 871	. 86	1. 41	32, 486, 052	. 93	1. 18	37, 681, 123	1. 03	1. 25	41, 307, 760	1. 02	1. 14	. 97	1. 24
Big Lake	5, 751, 665	. 64	1. 26	4, 612, 982	. 84	1. 16	3, 911, 725	. 68	1. 28	4, 036, 556	. 68	1. 21	. 71	1. 23
Corsicana (heavy)	107, 987	2. 44	1. 09	88, 450	1. 46	1. 01	80, 435	1. 06	. 82	144, 794	1. 39	1. 13	1. 61	1. 04
Mixed districts and others in Texas	5, 051, 133	. 98	. 99	6, 429, 652	. 80	. 78	7, 281, 079	. 72	1. 15	7, 348, 354	. 80	1. 00	. 81	. 98
Total	128, 663, 286	1. 19	1. 20	162, 310, 843	. 93	. 93	194, 493, 877	. 81	1. 12	183, 727, 576	. 87	1. 00	. 93	1. 06
Oklahoma:													
Bartlesville and Nowata, Rogers, Craig, Dewey, and Washington Counties	1, 126, 292	2. 82	1. 30	1, 163, 458	2. 35	1. 19	1, 339, 591	2. 31	1. 26	1, 101, 842	1. 82	1. 12	2. 33	1. 22
Tulsa and Creek Counties	4, 607, 378	1. 59	1. 37	3, 887, 704	1. 63	1. 28	4, 116, 021	1. 52	1. 30	3, 197, 036	1. 64	1. 22	1. 59	1. 30
Wagoner, Muskogee, and McIntosh Counties	87, 080	2. 55	1. 37	[illegible]	3. 76	1. 32	257, 379	1. 64	1. 43	175, 042	1. 17	1. 35	1. 75	1. 38
Okmulgee, Okfuskee, and Hughes Counties	2, 443, 299	1. 62	1. 45	1, 636, 805	1. 80	1. 45	1, 821, 696	1. 96	1. 53	1, 305, 534	3. 00	1. 28	1. 99	1. 44
Seminole and Pottowatomie Counties	5, 150, 183	1. 24	1. 58	5, 594, 250	1. 27	1. 59	4, 740, 482	1. 48	1. 49	6, 873, 809	1. 41	1. 31	1. 35	1. 39
Osage County	7, 052, 016	1. 64	1. 43	6, 368, 412	1. 72	1. 37	4, 648, 835	1. 80	1. 40	4, 193, 603	1. 75	1. 26	1. 72	1. 37
Pawnee, Payne, and Lincoln Counties	3, 450, 762	[illegible]	1. 47	2, 520, 862	1. 71	1. 43	2, 238, 700	1. 82	1. 50	2, 776, 511	1. 91	1. 35	1. 78	1. 44
Kay, Noble, Garfield, and Grant Counties	14, 247, 343	1. 14	1. 58	8, 731, 266	1. 24	1. 57	6, 708, 519	1. 23	1. 49	4, 930, 396	1. 25	1. 45	1. 20	1. 54
Caddo, Grady, Comanche, and Garvin Counties	255, 612	1. 70	1. 31	205, 110	2. 10	1. 18	347, 390	1. 47	1. 12	881, 906	1. 32	1. 05	1. 50	1. 12
Stephens, Cotton, Carter, and Jefferson Counties	5, 771, 004	1. 41	1. 30	5, 442, 718	1. 40	1. 18	11, 600, 101	1. 23	1. 33	5, 539, 264	1. 22	1. 08	1. 30	1. 24
Burbank field	5, 195, 551	1. 51	1. 47	3, 154, 364	1. 64	1. 36	2, 169, 859	1. 38	1. 41	1, 553, 273	1. 47	1. 28	1. 51	1. 39
Cushing field	5, 343, 123	1. 23	1. 48	4, 448, 530	1. 24	1. 48	3, 903, 137	1. 36	1. 54	3, 363, 905	1. 53	1. 36	1. 32	1. 47
Oklahoma City field				74, 071	. 71	1. 41	3, 879, 039	. 91	1. 52	19, 746, 013	1. 20	1. 30	1. 15	1. 34
Healdon field	4, 530, 975	1. 09	1. 20	4, 882, 073	1. 09	1. 23	4, 213, 848	. 99	1. 09	3, 895, 882	. 90	1. 01	1. 02	1. 09
Seminole field	84, 499, 153	1. 01	1. 41	81, 405, 249	. 94	1. 43	85, 635, 218	1. 04	1. 49	60, 974, 109	1. 05	1. 36	1. 01	1. 42
All other districts in Oklahoma	41, 740, 249	1. 30	1. 43	35, 046, 425	1. 11	1. 29	33, 585, 048	1. 13	1. 42	15, 079, 830	1. 31	1. 28	1. 21	1. 37
Total	185, 500, 029	1. 20	1. 42	164, 942, 654	1. 12	1. 38	171, 204, 863	1. 16	1. 45	135, 587, 955	1. 22	1. 31	1. 18	1. 39
Kansas:													
Eldorado-Augusta	7, 705, 644	1. 63	1. 39	7, 376, 871	1. 61	1. 32	9, 926, 928	1. 45	1. 46	10, 314, 482	1. 56	1. 29	1. 56	1. 37
Greenwood and Woodson Counties	3, 975, 872	1. 43	1. 47	3, 827, 837	1. 60	1. 43	3, 902, 746	1. 59	1. 53	3, 749, 119	1. 54	1. 36	1. 54	1. 45
East Kansas	727, 562	1. 90	1. 39	788, 973	1. 68	1. 30	1, 132, 869	1. 39	1. 36	1, 541, 305	1. 21	1. 23	1. 46	1. 31
Russell County	426, 520	1. 40	1. 50	277, 930	1. 93	1. 40	266, 861	1. 98	1. 42	147, 714	2. 46	1. 06	1. 81	1. 40
Wichita	92, 330	1. 56	1. 47	612, 024	. 98	1. 44	3, 791, 663	1. 03	1. 65	3, 714, 779	1. 06	1. 45	1. 05	1. 54
Sumner County	6, 871, 003	1. 22	1. 37	6, 146, 755	1. 09	1. 35	1, 297, 787	1. 30	1. 48	1, 736, 201	1. 34	1. 35	1. 19	1. 37

TABLE 86.—*Crude petroleum: Unit cost of production and unit sales price, by districts, 1927–1930*—Continued

GROUP I. LARGE COMPANIES—Continued

District	1927			1928			1929			1930			4-year weighted average	
	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Unit cost including interest on investment	Unit sales price
Kansas—Continued.	*Barrels*			*Barrels*			*Barrels*			*Barrels*				
Lyon County	37,556	$1.04	$1.51	20,295	$1.70	$1.45	12,767	$1.39	$1.52	9,024	$2.48	$1.36	$1.43	$1.48
Rice County and Hutchinson district	105,592	2.67	1.32	70,687	2.22	1.19	2,236,690	.49	1.41	1,642,301	1.15	1.26	.85	1.34
Total	19,942,079	1.46	1.40	19,121,372	1.43	1.35	22,568,311	1.30	1.49	22,854,925	1.41	1.33	1.40	1.40
Arkansas:														
Eldorado	8,281,913	.93	1.07	7,127,189	1.03	.89	5,805,872	1.54	.94	4,857,676	1.22	.93	1.11	.96
Smackover	11,658,430	.91	1.02	8,983,288	.95	.79	7,520,511	.96	.84	5,969,449	1.06	.87	.96	.89
Total	19,940,343	.92	1.04	16,110,477	.99	.83	13,326,383	1.14	.88	10,827,125	1.13	.90	1.02	.92
Louisiana:														
Bull Bayou	499,568	2.14	1.46	664,779	1.50	1.39	668,254	1.85	1.42	598,290	2.67	1.59	2.02	1.41
Haynesville	11,280,897	1.30	1.18	9,011,244	1.37	1.09	7,188,880	1.59	1.14	8,288,498	1.47	1.14	1.42	1.14
Caddo	2,616,598	1.59	1.45	2,135,185	1.63	1.39	2,057,655	1.59	1.48	1,095,650	1.64	1.23	1.61	1.41
Gulf coast	2,198,727	1.48	1.12	3,779,954	1.17	1.12	3,601,472	1.38	1.22	4,583,606	1.30	1.06	1.32	1.13
Total	16,595,790	1.40	1.22	15,591,182	1.36	1.15	13,516,261	1.55	1.23	14,566,044	1.48	1.13	1.44	1.18
Wyoming:														
Salt Creek	193,375	1.89	1.40	197,228	1.94	1.29	316,794	2.60	1.43	442,294	4.84	1.28	3.23	1.34
Big Muddy	151,043	.74	1.35	129,101	.64	1.29	368,777	1.77	1.41	91,918	.48	1.31	1.21	1.37
Grass Creek	574,651	.72	1.44	514,849	.58	1.39	483,000	.70	1.54	433,013	.61	1.48	.65	1.46
Rock River	530,762	.78	1.35	504,870	.71	1.29	528,706	.66	1.33	423,819	.36	1.28	.64	1.31
All other districts	1,152,925	1.21	1.14	1,525,473	.82	1.04	1,653,580	.89	1.05	2,196,907	1.23	.97	1.05	1.03
Total	2,602,756	1.03	1.28	2,871,521	.83	1.17	3,350,857	1.08	1.24	3,587,951	1.58	1.19	1.16	1.22

TABLE 87.—*Crude petroleum: Unit cost of production and unit sales price, by districts, 1927–1930*

GROUP II. SMALL COMPANIES

District	1927			1928			1929			1930			4-year weighted average	
	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Unit cost including interest on investment	Unit sales price
California:	*Barrels*			*Barrels*			*Barrels*			*Barrels*				
Long Beach, Seal Beach, Signal Hill	1,648,326	$0.97	$1.05	3,712,096	$1.05	$1.06	4,955,792	$0.99	$1.08	3,953,593	$1.00	$1.27	$1.01	$1.12
Santa Fe Springs	432,203	.73	.98	362,953	1.86	1.26	1,171,947	1.95	1.29	1,394,852	1.04	1.37	1.41	1.26
Redonda-Torrance	323,906	1.28	.93	215,331	1.26	.84	247,636	1.37	.40	155,601	1.53	.82	1.34	.82
Coalinga (light)	190,344	.86	.78	156,821	.71	.74	145,641	.62	.56	189,777	.68	.55	.72	.66
Coalinga (heavy)	188,005	.83	.91	170,191	.83	.74	163,735	.77	.60	100,295	.67	.53	.79	.72
Huntington Beach	871,763	1.06	1.09	592,361	.87	.87	516,994	1.43	.96	606,622	1.50	.97	1.19	.99
Kern River, Kern River Front, Mount Poso, Round Mountain	831,389	.90	.77	942,827	.83	.73	762,922	1.17	.68	490,790	1.12	.54	.98	.70
Elk Hills, McKittrick				102,633	1.38	.75	120,389	.98	.53	117,465	.90	.54	1.07	.60
Lawndale Potrero, Rosecrans	100	179.44	1.92	1,256	34.91	1.59	49,772	.95	1.02	173,775	2.52	1.78	2.43	1.61
Belridge, Lost Hills										93,829	.34	.55	.34	.55
Ventura (Avenue)	220,503	1.30	1.41	179,859	.72	1.13	348,095	2.57	1.18	315,739	1.28	1.21	1.61	1.23
Buena Vista, Maricopa, Midway Sunset, Wheeler Ridge	1,342,517	1.32	.81	1,581,598	1.09	.78	1,843,531	1.04	.66	1,549,341	.97	.71	1.10	.73
Culver City, Inglewood, Montebella, Whittier	24,910	.89	.85	23,411	.91	.85	22,226	.83	.71	22,293	.86	.67	.87	.77
Arro Grande, Casmalia, Cat Canyon, Lompoc, Santa Maria	472,079	.97	.81	408,812	1.17	.77	158,159	1.96	.63	87,441	2.04	.49	1.26	.74
Bardsdale, Conejo, Newhall, Ojai, Peru, Santa Paula	39,268	1.76	1.14	62,737	1.06	.77	37,000	2.04	1.08	34,329	2.41	.97	1.70	.96
Brea-Olinda, Coyote Hills, East Coyote, West Coyote, Olinda, Richfield	1,073,742	1.03	1.01	1,294,808	1.09	.98	1,416,333	.78	1.04	1,241,410	.66	1.06	.88	1.02
Baldwin Hills, La Habra, Merced Hills, and all other	292,050	.26	.85	800,536	.64	.81	696,850	.46	.90	265,739	1.22	.75	.60	.84
Santa Barbara Beach fields				178,488	1.61	1.08	236,886	.90	1.07	534,416	.38	1.37	.74	1.24
Total	7,951,105	1.02	.95	10,786,718	1.04	.92	12,893,908	1.12	.96	11,327,307	1.01	1.09	1.05	.98

TABLE 87.—*Crude petroleum: Unit cost of production and unit sales price, by districts, 1927–1930*—Continued

GROUP II. SMALL COMPANIES—Continued

District	1927			1928			1929			1930			4-year weighted average	
	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Production	Unit cost including interest on investment	Unit sales price	Unit cost including interest on investment	Unit sales price
Texas:	*Barrels*			*Barrels*			*Barrels*			*Barrels*				
Panhandle	2,429,736	$0.84	$0.90	1,641,178	$0.91	$1.01	1,508,442	$0.97	$1.24	1,623,081	$1.51	$1.00	$1.03	$1.02
West Texas	2,136,351	.32	.35	2,783,203	.47	.58	1,618,178	1.10	.96	2,347,937	1.42	.78	.80	.64
North Texas	1,822,058	1.30	1.45	1,414,138	1.76	1.42	1,833,667	1.59	1.45	1,753,532	1.36	1.22	1.49	1.38
Mexia, Wortham	205,596	.98	1.39	296,539	1.36	1.27	301,523	1.34	1.35	152,550	1.20	1.29	1.24	1.33
Luling, Bruner	97,697	1.61	1.41	65,459	1.58	1.29	52,999	1.64	1.34	46,766	1.62	1.20	1.61	1.33
North Central Texas	449,005	1.95	1.39	435,977	1.72	1.40	376,880	1.72	1.47	1,076,666	1.34	1.28	1.59	1.35
East Texas	34,536	1.52	1.61	24,181	1.57	1.58	25,257	1.59	1.69	20,810	1.61	1.41	1.56	1.58
Southwest Texas	57,871	.64	1.10	48,100	.89	1.00	41,882	.82	.84	190,215	.88	.79	.83	.88
Gulf Coast	569,621	1.20	1.16	526,807	1.59	1.27	450,347	1.64	1.21	692,506	1.35	.95	1.43	1.13
All others	92,443	1.74	1.75	109,205	1.61	1.34	202,342	1.67	1.13	309,814	1.18	.94	1.46	1.16
Total	7,894,914	.92	.96	7,344,787	1.04	.99	6,411,517	1.32	1.24	8,213,877	1.39	1.02	1.16	1.04
Oklahoma:														
Bartlesville and Nowata, Rogers, Craig, Dewey, and Washington Counties	6,888	1.41	1.31	611,854	1.34	1.22	592,920	1.26	1.28	808,145	1.13	1.13	1.27	1.23
Tulsa and Creek Counties	389,410	1.61	1.37	330,197	1.37	1.25	360,754	1.26	1.26	246,232	1.46	1.17	1.43	1.27
Wagoner, Muskogee, and McIntosh Counties	11,623	2.02	1.55	10,559	1.96	1.43	10,335	1.76	1.52	16,420	1.71	.96	1.85	1.32
Okmulgee, Okfuskee, and Hughes Counties	93,889	.73	1.70	90,227	1.35	1.42	96,477	.14	1.43	94,956	1.51	1.35	.92	1.48
Seminole and Pottawatomie Counties	9,920	2.16	1.71	36,412	2.56	1.42	171,909	1.42	1.53	80,088	1.64	1.31	1.65	1.46
Osage County	450,206	1.16	1.36	552,511	1.07	1.24	571,496	.96	1.28	525,242	.92	1.16	1.02	1.26
Pawnee, Payne, and Lincoln Counties	238,112	2.25	1.50	190,679	2.19	1.39	47,197	2.36	1.45	134,861	1.98	1.34	2.18	1.43
Kay, Noble, Garfield, and Grant Counties	67,085	1.36	1.55	51,227	.34	1.56	152,164	.83	1.61	268,141	1.33	1.37	1.10	1.48
Caddo, Grady, Commanche, and Harvin Counties	32,132	2.58	1.14	40,448	1.60	.74	33,181	.57	.75	17,934	1.58	.62	1.57	.83
Stephens, Cotton, Carter, and Jefferson Counties	230,844	1.61	1.30	201,594	1.55	1.18	273,063	1.56	1.24	175,087	1.08	1.11	1.47	1.22
Cushing field	557,078	.88	1.71	526,287	1.10	1.48	589,802	1.06	1.55	596,559	.84	1.44	.96	1.53

Oklahoma City field							657,606	1.09	1.62	2,216,371	1.66	1.31	1.53	1.38
Healdton field	546,388	1.08	1.25	497,997	.85	1.13	454,813	.76	1.14	421,117	.66	1.05	.85	1.15
Seminole field	1,105,702	.88	1.41	452,572	1.03	1.44	674,654	1.09	1.42	313,472	1.11	1.36	.99	1.41
All others	117,990	1.67	1.49	193,158	1.49	1.47	102,357	1.82	1.46	120,600	2.41	1.61	1.80	1.51
Total	4,417,267	1.22	1.41	3,785,722	1.23	1.30	4,788,728	1.11	1.39	6,035,225	1.33	1.27	1.23	1.34
Kansas:														
Eldorado-Augusta, Butler County	71,546	.82	1.38	51,691	.92	1.26	44,485	1.09	1.31	52,191	1.47	1.16	1.05	1.29
Greenwood and Woodson Counties	256,644	.85	1.53	166,968	1.07	1.45	114,346	1.59	1.51	98,709	1.72	1.36	1.18	1.48
East Kansas	179,620	1.98	1.27	210,517	1.65	1.20	226,148	1.43	1.23	208,283	1.28	1.12	1.57	1.20
Cowley and Sumner Counties	365,602	1.34	1.48	229,532	1.42	1.47	243,665	1.29	1.54	194,101	1.30	1.39	1.34	1.47
Lyon and Chase Counties										3,763	9.11	1.35	9.11	1.35
Rice and Reno Counties, Hutchinson district	9,989	2.29	1.51	7,653	2.35	1.47	6,386	2.41	1.55	7,214	1.96	1.37	2.25	1.48
Total	883,401	1.29	1.44	666,361	1.38	1.36	635,030	1.39	1.41	564,261	1.44	1.26	1.37	1.38
Arkansas:														
Eldorado	497,133	.84	1.16	339,061	.89	.95	340,345	.76	1.13	335,643	1.25	1.19	.92	1.11
Smackover	1,483,694	.76	1.05	721,858	1.17	.81	670,677	1.16	.82	562,861	1.35	.83	1.02	.92
Total	1,980,827	.78	1.08	1,060,919	1.08	.86	1,011,022	1.02	.92	898,504	1.31	.96	.99	.98
Louisiana:														
Bull Bayou, Red River, and Sabine Parishes	97,105	1.15	1.12										1.15	1.12
Haynesville, Homer	435,753	1.77	1.43	403,761	1.82	1.18	370,697	1.33	1.30	332,675	1.47	1.27	1.61	1.30
De Soto, Mansfield, Caddo	262,655	1.28	1.39	158,473	1.62	1.32	270,556	1.26	1.47	324,077	1.47	1.30	1.39	1.37
Gulf coast	221,729	.71	1.14	202,000	.71	1.12	336,453	1.00	1.23	389,527	.86	1.06	.84	1.14
Total	1,017,242	1.35	1.33	764,234	1.49	1.20	977,706	1.20	1.32	1,046,279	1.23	1.20	1.31	1.26
Wyoming:														
Salt Creek	1,730,934	1.17	1.39	1,532,193	1.09	1.30	1,287,788	1.05	1.33	1,355,270	.86	1.25	1.05	1.32
Grass Creek	135,125	1.91	1.56	132,234	2.03	1.36	119,095	.82	1.50				1.62	1.47
All others	197,808	.99	.84	211,002	1.36	.77	505,178	1.35	.89	400,833	1.35	.83	1.30	.84
Total	2,063,867	1.20	1.35	1,875,429	1.18	1.24	1,912,061	1.11	1.22	1,756,103	.97	1.15	1.12	1.25

2. Department of the Interior, Petroleum Administrative Board, *Preliminary Report on a Survey of Crude Petroleum, Cost of Production for the Years* 1931–1933 [pp. 5, 10–33]:

Table 1.—*Crude petroleum—Average cost per barrel (company interest oil) at wells and sales value by groups of States, 1931–33*

[Group A, California; group B, Texas, Oklahoma, Kansas, Arkansas, Louisiana, and New Mexico; group C, Colorado, Montana, and Wyoming; group D, Illinois, Indiana, Ohio, Michigan, Kentucky, West Virginia, Pennsylvania, and New York]

	1931					1932				
	Group A	Group B	Group C	Group D	Total all groups	Group A	Group B	Group C	Group D	Total all groups
Production	125,536,923	398,774,351	12,421,279	21,564,280	558,296,833	121,941,496	361,733,693	10,453,984	23,457,765	517,586,938
Expenses:										
Depletion	$0.063	$0.082	$0.237	$0.162	$0.084	$0.070	$0.076	$0.233	$0.160	$0.081
Depreciation	.190	.140	.221	.311	.160	.170	.135	.222	.281	.152
Amortization of intangible development costs	.023	.036	.051	.148	.037	.025	.041	.060	.148	.043
Operating cost	.233	.190	.340	.643	.220	.208	.189	.347	.556	.213
General overhead and administration	.207	.397	.215	.303	.347	.188	.293	.201	.236	.264
Total	.716	.845	1.064	1.567	.848	.661	.734	1.063	1.381	.753
Less gas sales and miscellaneous revenue	.165	.029	.049	.103	.063	.148	.027	.052	.084	.059
Net cost	.551	.816	1.015	1.464	.785	.513	.707	1.011	1.297	.694
Interest at 6 percent on investment	.138	.085	.179	.343	.109	.137	.093	.174	.296	.114
Net cost, including interest	.689	.901	1.[illegible]4	1.807	.894	.650	.800	1.185	1.593	.808
Average sales value at well	.705	.576	.578	1.396	.643	.799	.840	.972	1.387	.858

	Jan. 1 to Sept. 30, 1933					Oct. 1 to Dec. 31, 1933				
	Group A	Group B	Group C	Group D	Total all groups	Group A	Group B	Group C	Group D	Total all groups
Production	85,936,231	313,090,484	6,569,548	15,995,948	421,592,211	28,039,308	97,296,901	2,716,840	6,098,359	134,151,408
Expenses:										
Depletion	$0.072	$0.065	$0.235	$0.158	$0.073	$0.073	$0.067	$0.221	$0.155	$0.076
Depreciation	.158	.115	.235	.288	.132	.162	.123	.223	.260	.139
Amortization of intangible development costs	.030	.055	.062	.152	.054	.032	.055	.048	.200	.056
Operating cost	.193	.149	.334	.524	.175	.215	.198	.339	.559	.221
General overhead and administration	.161	.225	.170	.222	.211	.184	.260	.170	.228	.241
Total	.614	.609	1.036	1.344	.645	.666	.703	1.001	1.402	.733
Less gas sales and miscellaneous revenue	.150	.022	.036	.081	.051	.201	.037	.065	.077	.074
Net cost	.464	.587	1.000	1.263	.594	.465	.666	.936	1.325	.659
Interest at 6 percent on investment	.137	.086	.180	.293	.105	.150	.092	.147	.255	.113
Net cost, including interest	.601	.673	1.180	1.556	.699	.615	.758	1.083	1.580	.772
Average sales value at well	.792	.481	.770	1.239	.578	.924	.965	.918	1.770	.992

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
CALIFORNIA																
Long Beach (Signal Hill), Seal Beach, including Alamitos Heights, pools																
1931	19–32	27.2–501.0	16,353,684	$0.043	$0.271	$0.037	$0.263	$0.226	$0.840	$0.169	$0.671	$0.113	$0.784	$0.756	$0.18	$2.54
1932	19–30	25.0–585.0	14,666,903	.039	.234	.048	.259	.212	.792	.144	.648	.108	.756	.839	.41	2.69
First 9 months of 1933	19–32	15.0–209.7	9,804,611	.060	.175	.041	.259	.196	.731	.119	.612	.112	.724	.824	.30	3.42
Last 3 months of 1933	19–32	15.5–209.7	2,843,224	.049	.195	.038	.326	.212	.820	.168	.652	.120	.772	.956	.28	2.59
1933	19–32	14.0–209.7	12,740,041	.058	.180	.040	.275	.200	.753	.131	.622	.114	.736	.855	.28	3.42
3-year weighted average			14,586,876	.046	.232	.042	.265	.214	.799	.150	.649	.111	.760	.812		
Santa Fe Springs pool																
1931	32–35	44.5–947.8	12,325,632	.069	.345	.004	.242	.248	.908	.146	.762	.073	.835	.836	.29	2.57
1932	32–35	38.3–718.5	11,763,354	.070	.275	.001	.227	.208	.781	.126	.655	.062	.717	.977	.32	3.85
First 9 months of 1933	30–35	32.9–488.3	7,446,479	.059	.247	.003	.231	.157	.697	.106	.591	.054	.645	.980	.31	3.05
Last 3 months of 1933	30–35	32.9–488.3	2,058,229	.058	.277	.004	.247	.191	.777	.142	.635	.090	.725	1.174	.33	4.99
1933	30–35	32.9–488.3	9,637,131	.058	.255	.003	.235	.164	.715	.115	.600	.063	.663	1.021	.27	3.05
3-year weighted average			11,242,039	.066	.295	.003	.235	.209	.808	.130	.678	.066	.744	.938		
Torrance (Redondo) pool																
1931	15–20	5.0– 60.0	1,306,512	.060	.311	.001	.613	.202	1.187	.044	1.143	.350	1.493	.668	.78	2.58
1932	15–20	4.6– 49.1	1,374,296	.067	.321	.001	.483	.167	1.039	.027	1.012	.313	1.325	.679	.59	3.34
First 9 months of 1933	15–22	4.2– 45.8	1,061,492	.065	.264	.002	.429	.150	.910	.029	.881	.284	1.165	.655	.52	3.38
Last 3 months of 1933	15–20	4.2– 45.8	387,354	.061	.278	.001	.446	.164	.950	.030	.920	.259	1.179	.761	.40	3.33
1933	15–22	4.2– 45.8	1,459,963	.063	.266	.002	.434	.156	.921	.029	.892	.276	1.168	.681	.40	3.38
3-year weighted average			1,380,257	.063	.299	.001	.507	.174	1.044	.033	1.011	.312	1.323	.676		

Huntington Beach and Newport pools																
1931	14–30	11. 3–152. 3	4, 020, 282	. 078	. 218	. 007	. 377	. 196	. 876	. 076	. 800	. 157	. 957	. 724	. 49	1. 99
1932	14–30	14. 5–149. 9	4, 103, 484	. 098	. 179	. 009	. 264	. 177	. 727	. 054	. 673	. 139	. 812	. 787	. 52	2. 68
First 9 months of 1933	14–26	12. 0–190. 0	3, 308, 670	. 104	. 116	. 023	. 218	. 167	. 628	. 052	. 576	. 117	. 693	. 792	. 11	2. 82
Last 3 months of 1933	14–28	12. 0–248. 0	1, 198, 860	. 091	. 155	. 030	. 233	. 173	. 682	. 069	. 613	. 113	. 726	. 920	. 15	3. 25
1933	14–28	12. 0–248. 0	4, 520, 764	. 101	. 127	. 025	. 222	. 169	. 644	. 057	. 587	. 117	. 704	. 826	. 11	3. 25
3-year weighted average	------	------	4, 214, 843	. 093	. 173	. 014	. 285	. 180	. 745	. 062	. 683	. 137	. 820	. 781	------	------
Lawndale, Potrero, and Rosecrans pools																
1931	23–45	8. 0–217. 0	768, 989	. 191	. 441	. 022	. 428	. 126	1. 208	. 303	. 905	. 250	1. 155	. 951	. 36	14. 67
1932	23–45	8. 5– 83. 3	573, 813	. 435	. 291	. 002	. 355	. 105	1. 188	. 338	. 850	. 203	1. 053	1. 006	. 23	11. 74
First 9 months of 1933	27–45	9. 0–183. 0	366, 167	. 111	. 238	. 004	. 323	. 100	. 776	. 398	. 378	. 179	. 557	1. 034	. 10	19. 98
Last 3 months of 1933	27–45	9. 0–183. 0	129, 168	. 108	. 228	. 007	. 279	. 060	. 682	. 422	. 260	. 226	. 486	1. 190	. 10	2. 95
1933	27–45	9. 0–183. 0	500, 933	. 110	. 233	. 005	. 314	. 090	. 752	. 400	. 352	. 189	. 541	1. 074	. 10	19. 98
3-year weighted average	------	------	614, 578	. 245	. 337	. 011	. 375	. 110	1. 078	. 340	. 738	. 219	. 957	1. 002	------	------
Inglewood and Playa Del Rey pools																
1931	19–38	13. 8–178. 5	5, 892, 382	. 056	. 179	. 036	. 181	. 200	. 652	. 041	. 611	. 060	. 671	. 646	. 13	2. 61
1932	17–38	12. 9–231. 0	4, 785, 568	. 057	. 169	. 019	. 185	. 170	. 600	. 045	. 555	. 055	. 610	. 678	. 23	1. 83
First 9 months of 1933	14–23	6. 0–132. 4	2, 867, 689	. 067	. 168	. 024	. 167	. 159	. 585	. 054	. 531	. 051	. 582	. 711	. 25	1. 81
Last 3 months of 1933	14–24	6. 0–132. 4	746, 860	. 067	. 202	. 021	. 208	. 185	. 683	. 049	. 634	. 061	. 695	. 870	. 32	7. 90
1933	14–24	6. 0–132. 4	3, 779, 803	. 064	. 173	. 023	. 177	. 165	. 602	. 052	. 550	. 054	. 604	. 741	. 25	7. 90
3-year weighted average	------	------	4, 819, 251	. 058	. 174	. 027	. 182	. 181	. 622	. 045	. 577	. 057	. 634	. 681	------	------
Dominguez pool																
1931	27–31	57. 2–270. 4	2, 290, 110	. 086	. 195	. 011	. 142	. 147	. 581	. 206	. 375	. 138	. 513	. 794	. 37	. 60
1932	27–31	83. 8–268. 8	3, 738, 433	. 075	. 124	. 013	. 091	. 116	. 419	. 182	. 237	. 127	. 364	. 952	. 20	. 61
First 9 months of 1933	27–32	86. 3–200. 5	2, 737, 616	. 062	. 124	. 007	. 087	. 114	. 394	. 198	. 196	. 193	. 389	. 938	. 17	. 58
Last 3 months of 1933	27–32	86. 3–200. 5	838, 893	. 071	. 132	. 017	. 097	. 094	. 411	. 277	. 134	. 210	. 344	1. 081	. 13	. 82
1933	27–32	86. 3–200. 5	3, 576, 509	. 064	. 126	. 010	. 089	. 109	. 398	. 216	. 182	. 196	. 378	. 971	. 13	. 82
3-year weighted average	------	------	3, 201, 684	. 073	. 142	. 011	. 103	. 121	. 450	. 201	. 249	. 156	. 405	. 921	------	------
Brea-Olinda, Coyote Hills, Richfield, Montebello, Whittier, La Habra, Merced Hills and Baldwin Hills pools																
1931	16–31	1. 0–153. 4	9, 666, 300	. 081	. 175	. 015	. 295	. 183	. 749	. 092	. 657	. 166	. 823	. 728	. 49	6. 29
1932	16–31	1. 0–293. 9	8, 858, 702	. 077	. 149	. 021	. 263	. 165	. 675	. 084	. 591	. 175	. 766	. 771	. 47	1. 92
First 9 months of 1933	16–31	1. 0–190. 5	5, 885, 085	. 102	. 162	. 021	. 236	. 150	. 671	. 071	. 600	. 134	. 734	. 790	. 50	2. 99
Last 3 months of 1933	16–31	1. 0–190. 5	2, 293, 603	. 096	. 150	. 018	. 229	. 156	. 649	. 099	. 550	. 168	. 718	. 939	. 42	2. 00
1933	16–31	1. 0–190. 5	8, 612, 069	. 097	. 166	. 019	. 241	. 164	. 687	. 078	. 609	. 147	. 756	. 828	. 42	2. 99
3-year weighted average	------	------	9, 045, 690	. 085	. 163	. 018	. 268	. 171	. 705	. 085	. 620	. 163	. 783	. 774	------	------

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
CALIFORNIA—Continued																
Other Los Angeles Basin [1]																
1931	15–35	8.4– 99.5	5,498,541	$0.037	$0.225	$0.001	$0.208	$0.202	$0.673	$0.112	$0.561	$0.121	$0.682	$0.772	$0.67	$1.26
1932	16–35	21.2– 91.0	5,320,721	.041	.213	.006	.193	.118	.571	.084	.487	.108	.595	.842	.55	.69
First 9 months of 1933	17–35	24.9– 43.0	3,540,915	.047	.233	.022	.204	.120	.626	.092	.534	.103	.637	.830	.44	.66
Last 3 months of 1933	17–35	24.9– 43.0	971,944	.046	.270	.012	.267	.162	.757	.117	.640	.125	.765	.976	.44	.78
1933	17–35	24.9– 43.0	4,512,859	.047	.241	.020	.217	.129	.654	.097	.557	.108	.665	.861	.44	.78
3-year weighted average			5,110,707	.041	.225	.008	.206	.152	.632	.098	.534	.112	.646	.822		
Ventura Avenue pool																
1931	23–30	3.0–194.8	13,378,512	.033	.190	.028	.159	.177	.587	.255	.332	.089	.421	.753	.24	15.77
1932	23–30	3.4–336.5	10,823,708	.030	.246	.046	.156	.175	.653	.283	.370	.105	.475	.899	.35	1.61
First 9 months of 1933	13–30	3.1–264.6	8,238,355	.025	.237	.066	.130	.160	.618	.269	.349	.103	.452	.878	.34	5.97
Last 3 months of 1933	23–30	3.1–246.6	2,693,541	.032	.227	.093	.154	.130	.636	.346	.290	.105	.395	1.025	.19	6.07
1933	13–30	3.1–264.6	10,931,896	.027	.234	.073	.136	.152	.622	.288	.334	.104	.438	.915	.19	6.07
3-year weighted average			11,711,372	.030	.221	.048	.151	.169	.619	.274	.345	.098	.443	.848		
Bardsdale, Conejo, Newhall, Ojai, Piru, Santa Paula, Simi, and Sespe pools																
1931	13–36	1.2– 64.0	116,846	.035	.220	.030	.373	.236	.894	.002	.892	.354	1.246	.635	.51	11.54
1932	13–35	1.7– 52.3	166,054	.078	.179	.028	.326	.221	.832	.026	.806	.259	1.065	.647	.68	3.31
First 9 months of 1933	22–36	1.6– 35.0	90,110	.116	.197	.054	.315	.147	.829	.024	.805	.363	1.168	.700	1.00	1.92
Last 3 months of 1933	22–36	1.6– 35.0	28,320	.108	.248	.059	.339	.125	.879	.043	.836	.382	1.218	.728	1.00	1.36
1933	22–36	1.6– 35.0	139,425	.097	.221	.047	.312	.144	.821	.024	.797	.315	1.112	.695	.73	1.92
3-year weighted average			140,775	.073	.204	.035	.334	.200	.846	.019	.827	.304	1.131	.659		

Santa Barbara beach fields [2]																
1931	22–36	14.0–1,044.5	8,009,688	.049	.138	.015	.145	.192	.539	.062	.477	.053	.530	.757	.35	1.61
1932	15–36	16.0– 577.0	4,310,847	.063	.182	.029	.192	.233	.699	.054	.645	.063	.728	.930	.54	15.99
First 9 months of 1933	27–36	17.0– 460.8	2,961,955	.077	.198	.054	.181	.179	.689	.041	.648	.076	.724	.916	.55	2.26
Last 3 months of 1933	23–36	17.0– 460.8	930,928	.038	.237	.065	.212	.253	.305	.048	.757	.081	.838	1.019	.19	2.83
1933	23–36	17.0– 460.8	3,892,883	.067	.207	.057	.188	.197	.716	.043	.673	.078	.751	.941	.19	2.83
3-year weighted average	--------	--------------	5,404,473	.057	.166	.029	.168	.204	.624	.055	.569	.067	.636	.847	--------	--------
Arroyo Grande, Casmalia, Cat Canyon, Lompoc, and Santa Maria pools																
1931	12–23	6.5– 17.0	670,135	.136	.313	--------	.342	.128	.919	.103	.816	.474	1.290	.595	.64	1.49
1932	12–23	6.4– 68.7	776,458	.170	.117	.001	.308	.100	.696	.093	.603	.508	1.111	.599	.67	2.27
First 9 months of 1933	12–23	3.0– 71.8	599,769	.170	.173	.001	.242	.107	.693	.093	.600	.595	1.195	.613	.75	2.32
Last 3 months of 1933	12–23	3.0– 71.8	342,247	.154	.154	--------	.177	.055	.540	.090	.450	.346	.796	.727	.67	2.09
1933	12–23	3.0– 71.8	942,016	.164	.166	--------	.219	.088	.637	.092	.545	.505	1.050	.655	.67	2.32
3-year weighted average	--------	--------------	796,203	.158	.192	--------	.282	.103	.735	.095	.540	.497	1.137	.620	--------	--------
Coalinga pool																
1931	14–23	2.7– 224.9	2,277,564	.113	.103	.001	.416	.170	.803	.040	.763	.541	1.304	.558	.19	185.61
1932	13–23	4.6– 60.6	2,945,786	.132	.093	--------	.310	.145	.680	.020	.660	.394	1.054	.575	.19	2.08
First 9 months of 1933	14–23	4.3– 47.0	2,485,842	.130	.095	--------	.232	.136	.593	.012	.581	.328	.909	.557	.16	1.52
Last 3 months of 1933	14–23	4.3– 47.0	1,274,830	.141	.070	--------	.217	.160	.588	.009	.579	.213	.792	.700	.17	1.32
1933	14–23	4.3– 47.0	3,804,715	.133	.086	--------	.228	.143	.590	.011	.579	.286	.865	.604	.16	1.35
3-year weighted average	--------	--------------	3,009,355	.127	.092	--------	.303	.151	.673	.021	.652	.386	1.038	.583	--------	--------
Kern River, Mount Poso, Round Mountain, and Fruitvale pools																
1931	13–22	.8– 233.3	6,644,579	.053	.143	.006	.216	.349	.767	.007	.760	.166	.926	.533	.43	8.08
1932	13–22	2.1– 132.0	7,322,869	.060	.137	.020	.205	.276	.698	.009	.689	.144	.833	.533	.14	3.51
First 9 months of 1933	13–22	.4– 122.0	5,323,196	.056	.190	.021	.201	.202	.670	.006	.664	.133	.797	.518	.19	3.37
Last 3 months of 1933	13–22	.4– 122.0	1,686,053	.064	.139	.015	.185	.220	.623	.015	.608	.205	.813	.574	.31	68.81
1933	13–22	.4– 122.2	7,310,974	.060	.175	.019	.201	.201	.656	.008	.648	.152	.800	.530	.19	68.81
3-year weighted average	--------	--------------	7,092,807	.058	.152	.015	.207	.273	.705	.008	.697	.154	.851	.532	--------	--------

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[1] Beverly Hills, Salt Lake, and Los Angeles pools.

[2] Includes Capitan, Elwood, Goleta, Santa Barbara, Rincon, and Summerland pools,

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
CALIFORNIA—Continued																
Elk Hills, McKittrick and Wheeler Ridge pools																
1931	14–23	12.0– 110.7	4,613,281	$0.065	$0.119	-------	$0.251	$0.197	$0.632	$0.031	$0.601	$0.159	$0.760	$0.593	$0.45	$1.65
1932	14–23	11.0– 70.4	4,191,404	.060	.084	-------	.214	.179	.537	.017	.520	.161	.681	.597	.43	1.04
First 9 months of 1933	14–23	9.2– 58.0	3,314,668	.063	.077	-------	.194	.174	.508	.008	.500	.146	.646	.573	.38	1.42
Last 3 months of 1933	14–23	7.3– 58.0	1,016,943	.069	.100	-------	.219	.200	.588	.019	.569	.165	.734	.658	.37	1.97
1933	14–23	7.3– 58.0	4,331,611	.064	.083	-------	.200	.180	.527	.011	.516	.150	.666	.593	.37	1.97
3-year weighted average	-------	-------	4,378,766	.063	.096	-------	.222	.186	.567	.020	.547	.157	.704	.594	-------	-------
Belridge and Lost Hills pools																
1931	14–40	1.1–1,863.2	2,729,300	.052	.048	$0.192	.126	.053	.471	.053	.418	.096	.514	.766	.17	3.96
1932	14–40	1.4–1,820.5	3,058,465	.049	.054	.175	.128	.051	.457	.083	.374	.081	.455	.868	.10	2.57
First 9 months of 1933	15–40	5.0– 284.7	2,075,438	.054	.069	.105	.164	.067	.459	.118	.341	.087	.428	.857	.27	2.53
Last 3 months of 1933	15–40	4.8– 284.7	804,473	.069	.072	.140	.280	.095	.656	.091	.565	.096	.661	.970	.29	4.89
1933	15–40	4.8– 284.7	2,879,911	.058	.070	.115	.196	.075	.514	.110	.404	.089	.493	.889	.27	4.89
3-year weighted average	-------	-------	2,889,225	.053	.057	.161	.150	.060	.481	.083	.398	.088	.486	.842	-------	-------
Midway-Sunset pool [3]																
1931	11–27	2.9– 392.0	15,474,198	.094	.146	.007	.317	.169	.733	.044	.689	.246	.935	.608	.27	3.64
1932	11–27	2.7– 356.0	14,745,997	.092	.139	.008	.278	.159	.676	.051	.625	.239	.864	.656	.27	3.57
First 9 months of 1933	11–27	2.7– 99.0	9,910,314	.091	.105	.007	.258	.139	.600	.063	.537	.237	.774	.669	.23	3.92
Last 3 months of 1933	11–27	2.7– 99.0	3,574,187	.087	.118	.006	.267	.199	.677	.070	.607	.219	.826	.756	.18	3.64
1933	11–27	2.7– 184.0	14,571,597	.091	.114	.006	.262	.149	.622	.063	.559	.231	.790	.694	.18	3.92
3-year weighted average	-------	-------	14,930,598	.092	.133	.007	.286	.160	.678	.052	.626	.239	.865	.652	-------	-------

Kettleman Hills pool																
1931	35–59	1, 116. 5–4, 060. 0	12, 249, 164	. 058	. 064	. 048	. 093	. 237	. 500	. 669	–. 169	. 083	–. 086	. 649	–0	1. 60
1932	35–59	904. 0–2, 435. 0	17, 379, 916	. 084	. 075	. 023	. 082	. 238	. 502	. 424	. 078	. 100	. 178	. 879	–0	6. 50
First 9 months of 1933	37–58	545. 0–1, 586. 2	13, 289, 899	. 084	. 087	. 046	. 079	. 174	. 470	. 435	. 035	. 118	. 153	. 865	–0	1. 48
Last 3 months of 1933	35–58	545. 0–1, 586. 2	4, 025, 130	. 088	. 092	. 038	. 088	. 230	. 536	. 676	–. 140	. 130	–. 010	1. 092	–0	1. 69
1933	35–38	545. 0–1, 586. 2	17, 420, 522	. 085	. 092	. 044	. 082	. 187	. 490	. 488	. 002	. 121	. 123	. 918	–0	1. 69
3-year weighted average			15, 683, 201	. 078	. 079	. 037	. 085	. 219	. 498	. 512	–. 014	. 103	. 089	. 834		
Other and unclassified																
1931	16–30	4. 2– 389. 0	1, 251, 224	. 175	. 254	. 024	. 358	. 330	1. 141	. 038	1. 103	. 131	1. 234	. 600	. 95	17. 57
1932	16–30	19. 9– 901. 0	1, 034, 718	. 108	. 226	. 117	. 365	. 210	1. 026	. 042	. 984	. 136	1. 120	. 735	. 80	3. 35
First 9 months of 1933	21–30	18. 0– 449. 5	627, 961	. 083	. 240	. 173	. 351	. 233	1. 080	. 028	1. 052	. 166	1. 218	. 763	. 80	63. 64
Last 3 months of 1933	16–30	18. 0– 449. 5	194, 521	. 079	. 258	. 195	. 372	. 261	1. 165	. 036	1. 129	. 178	1. 307	. 913	. 78	4. 84
1933	16–30	18. 0– 449. 5	1, 017, 160	. 088	. 227	. 144	. 334	. 215	1. 008	. 040	. 968	. 156	1. 124	. 794	. 64	63. 64
3-year weighted average			1, 101, 034	. 128	. 237	. 090	. 353	. 256	1. 064	. 040	1. 024	. 141	1. 165	. 702		
TOTAL CALIFORNIA																
1931			125, 536, 923	. 063	. 190	. 023	. 233	. 207	. 716	. 165	. 551	. 138	. 689	. 705		
1932			121, 941, 496	. 070	. 170	. 025	. 208	. 188	. 661	. 148	. 513	. 137	. 650	. 799		
First 9 months of 1933			85, 936, 231	. 072	. 158	. 030	. 193	. 161	. 614	. 150	. 464	. 137	. 601	. 792		
Last 3 months of 1933			28, 039, 308	. 073	. 162	. 032	. 215	. 184	. 666	. 201	. 465	. 150	. 615	. 924		
1933			116, 582, 782	. 073	. 160	. 030	. 201	. 166	. 630	. 160	. 470	. 141	. 611	. 822		
3-year weighted average			121, 353, 734	. 068	. 173	. 026	. 215	. 188	. 670	. 158	. 512	. 139	. 651	. 774		
TEXAS																
Panhandle [4]																
1931	31–44	3. 3– 112. 7	13, 121, 898	. 090	. 254	. 034	. 231	. 425	1. 034	. 122	. 912	. 134	1. 046	. 515	. 18	4. 88
1932	30–44	4. 0– 128. 3	12, 012, 762	. 091	. 238	. 038	. 230	. 306	. 903	. 099	. 804	. 135	. 939	. 779	. 20	2. 85
First 9 months of 1933	31–44	5. 0– 119. 5	8, 284, 153	. 116	. 233	. 050	. 217	. 243	. 859	. 087	. 772	. 128	. 900	. 436	–0	3. 08
Last 3 months of 1933	31–44	5. 0– 150. 4	2, 511, 474	. 125	. 243	. 050	. 257	. 246	. 921	. 147	. 774	. 141	. 915	. 864	–0	3. 77
1933	30–44	5. 0– 150. 4	11, 121, 274	. 117	. 232	. 049	. 226	. 250	. 874	. 104	. 770	. 132	. 902	. 536	–0	3. 77
3-year weighted average			12, 085, 311	. 098	. 242	. 040	. 229	. 332	. 941	. 109	. 832	. 134	. 966	. 609		
West Texas [5]																
1931	23–40	2. 0– 242. 9	49, 259, 615	. 040	. 091	. 010	. 117	. 379	. 637	. 009	. 628	. 045	. 673	. 438	. 19	21. 09
1932	23–40	1. 0– 251. 6	39, 989, 292	. 038	. 088	. 024	. 128	. 264	. 542	. 009	. 533	. 051	. 584	. 671	. 24	10. 68
First 9 months of 1933	23–40	2. 6– 156. 6	25, 970, 560	. 035	. 087	. 031	. 114	. 206	. 473	. 009	. 464	. 052	. 516	. 354	–0	10. 94
Last 3 months of 1933	24–40	2. 6– 156. 6	6, 846, 154	. 046	. 101	. 032	. 150	. 293	. 622	. 029	. 593	. 065	. 658	. 773	. 27	6. 28
1933	23–40	2. 6– 156. 6	33, 084, 922	. 037	. 090	. 031	. 121	. 223	. 502	. 013	. 489	. 055	. 544	. 441	–0	10. 94
3 year weighted average			40, 777, 943	. 038	. 090	. 021	. 122	. 299	. 570	. 010	. 560	. 049	. 609	. 515		

[3] Includes Maricopa.

[4] Includes Hutchinson, Carson, Gray, Moore, and Wheeler Counties.

[5] Includes Howard, Ector, Mitchell, Irion, Pecos, Fisher, Loving, Winkler, Ward, Reeves, Glasscock, Crane, Upton, Midland, Reagan, and Crockett Counties.

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
TEXAS—Continued																
North Texas [6]																
1931	23–42	0.3– 71.0	12,743,213	$0.240	$0.237	$0.028	$0.391	$0.353	$1.247	$0.078	$1.169	$0.176	$1.345	$0.630	$0.20	$7.39
1932	23–42	.4– 65.6	11,541,129	.206	.229	.030	.340	.259	1.064	.068	.996	.161	1.157	.916	.15	3.57
First 9 months of 1933	23–42	.4– 87.6	7,665,816	.196	.212	.030	.332	.221	.991	.067	.924	.147	1.071	.513	.23	4.86
Last 3 months of 1933	23–47	.4–503.0	2,730,965	.179	.204	.038	.378	.232	1.031	.106	.925	.139	1.064	.984	.24	5.56
1933	23–47	.4–503.0	11,446,881	.185	.204	.031	.336	.217	.973	.073	.900	.143	1.043	.637	.22	5.56
3-year weighted average			11,910,408	.211	.224	.029	.357	.279	1.100	.073	1.027	.160	1.187	.725		
Central Texas [7]																
1931	28–42	.7– 39.6	2,722,394	.107	.128	.003	.382	.529	1.149	.095	1.054	.056	1.110	.589	.45	2.77
1932	28–42	.5– 42.8	1,667,534	.072	.140	.010	.317	.413	.952	.128	.824	.057	.881	.782	.21	5.30
First 9 months of 1933	28–42	.6– 34.1	1,084,955	.055	.132	.023	.298	.343	.851	.082	.769	.048	.817	.440	.41	2.13
Last 3 months of 1933	29–42	.6– 34.1	314,716	.057	.117	.019	.326	.439	.958	.162	.796	.055	.851	.906	.38	1.55
1933	28–42	.6– 34.1	1,399,671	.056	.128	.022	.304	.365	.875	.100	.775	.049	.824	.545	.38	2.13
3-year weighted average			1,929,866	.085	.131	.009	.345	.456	1.026	.106	.920	.055	.975	.634		
Caldwell, Bastrop, and Guadalupe Counties																
1931	27–38	2.4– 68.4	12,077,607	.071	.102	.002	.253	.349	.777	.004	.773	.051	.824	.567	.46	2.99
1932	27–38	4.7– 56.8	8,885,632	.066	.095	.004	.235	.249	.649	.003	.646	.055	.701	.688	.50	2.72
First 9 months of 1933	27–38	1.6– 72.9	5,298,695	.074	.084	.006	.234	.195	.593	.004	.589	.058	.647	.401	.44	1.92
Last 3 months of 1933	27–37	1.6– 72.9	1,515,062	.074	.096	.006	.271	.233	.680	.004	.676	.067	.743	.834	−0	4.10
1933	27–38	1.6– 72.9	7,096,488	.073	.085	.006	.244	.200	.608	.004	.604	.058	.662	.497	−0	4.10
3-year weighted average			9,353,242	.069	.096	.004	.245	.280	.694	.003	.691	.053	.744	.588		
Other Central Texas [8]																
1931	18–46	1.0–183.4	1,881,446	.269	.144	.002	.092	.226	.733	.021	.712	.052	.764	.786	.33	11.99
1932	18–46	.9–178.0	1,482,193	.184	.112	.033	.165	.260	.754	.033	.721	.065	.786	.911	.29	7.13
First 9 months of 1933	22–48	.6– 59.0	746,990	.147	.111	.028	.187	.217	.690	.045	.645	.077	.722	.539	.31	6.51
Last 3 months of 1933	22–49	.6– 59.0	181,286	.133	.120	.021	.239	.268	.781	.104	.677	.104	.781	.947	.01	2.57
1933	22–49	.6– 59.0	982,415	.151	.112	.025	.201	.232	.721	.054	.667	.081	.748	.613	.01	6.51
3-year weighted average			1,448,685	.213	.126	.018	.142	.239	.738	.033	.705	.063	.768	.789		

Southwest Texas [9]															
1931	18-46	1.2-81.0	2,091,077	.087	.115	.037	.243	.171	.653	.032	.621	.093	.714	.626	.29	12.53
1932	18-49	1.0-113.3	2,372,270	.072	.089	.042	.249	.154	.606	.030	.576	.082	.658	.802	.35	5.36
First 9 months of 1933	18-49	.5-60.0	2,346,775	.043	.079	.063	.162	.160	.507	.023	.484	.065	.549	.425	.28	5.06
Last 3 months of 1933	18-49	.5-60.0	596,497	.033	.078	.060	.256	.187	.614	.029	.585	.080	.665	.794	.32	52.50
1933	18-49	.5-60.0	3,025,786	.040	.081	.063	.178	.169	.531	.023	.508	.067	.575	.501	.28	52.50
3-year weighted average	-----	-----	2,496,378	.063	.093	.049	219	.165	.589	.028	.561	.079	.640	.631	-----	-----
Government Wells Pool																
1931	18-23	12.2-820.6	663,078	.076	.097	.027	.146	.181	.527	.075	.452	.031	.483	.661	.22	1.11
1932	18-24	1.6-147.3	1,251,333	.050	.055	.042	.119	.180	.446	.030	.416	.028	.444	.789	.21	1.11
First 9 months of 1933	18-24	9.5-34.0	903,143	.053	.058	.039	.123	.142	.415	.029	.386	.087	.473	.426	.19	2.67
Last 3 months of 1933	18-24	9.5-34.0	287,480	.008	.048	.027	.175	.188	.446	.034	.412	.051	.463	.797	.23	1.30
1933	18-24	9.5-34.0	1,303,092	.043	.057	.040	.135	.150	.425	.033	.392	.077	.469	.512	.19	2.67
3-year weighted average	-----	-----	1,072,501	.052	.065	.038	.131	.168	.454	.040	.414	.048	.462	.650	-----	-----
Texas Gulf Coast [10]																
1931	17-62	1.0-504.0	32,776,222	.070	.123	.020	.204	.318	.735	.045	.690	.061	.751	.688	.37	23.17
1932	17-62	2.8-600.0	29,359,159	.068	.119	.033	.199	.272	.691	.075	.616	.077	.693	.815	.30	20.03
First 9 months of 1933	17-41	.8-412.3	28,607,853	.043	.095	.047	.156	.215	.556	.056	.500	.080	.580	.532	.17	6.25
Last 3 months of 1933	17-41	.8-620.0	8,868,921	.052	.116	.066	.198	.284	.716	.066	.650	.089	.739	1.023	.19	8.95
1933	17-41	.8-620.0	38,368,659	.045	.100	.051	.166	.229	.591	.057	.534	.081	.615	.655	.17	8.95
3-year weighted average	-----	-----	33,501,347	.060	.113	.035	.188	.271	.667	.058	.609	.073	.682	.713	-----	-----
East Texas proper [11]																
1931	37-42	10.8-175.9	58,347,999	.030	.044	.032	.074	.344	.524	.020	.504	.041	.545	.478	.11	2.96
1932	37-42	9.0-245.4	66,709,650	.034	.071	.053	.107	.281	.546	.017	.529	.080	.609	.945	.07	3.77
First 9 months of 1933	35-42	17.5-54.2	76,951,245	.031	.064	.059	.065	.211	.430	.009	.421	.075	.496	.474	.11	1.41
Last 3 months of 1933	36-42	17.5-54.2	22,721,552	.036	.077	.056	.086	.245	.500	.019	.481	.085	.566	.997	.10	1.54
1933	35-42	10.0-96.6	102,240,415	.033	.067	.059	.070	.215	.444	.012	.432	.078	.510	.592	.10	1.59
3-year weighted average	-----	-----	75,766,021	.032	.063	.050	.082	.267	.494	.015	.479	.069	.548	.666	-----	-----
Other east Texas [12]																
1931	32-41	1.3-198.4	14,276,496	.001	.028	.032	.054	.479	.594	.007	.587	.016	.603	.571	.49	13.06
1932	33-41	1.7-140.8	14,501,059	.002	.026	.035	.050	.327	.440	.006	.434	.025	.459	.857	.39	.89
First 9 months of 1933	33-41	2.9-139.5	11,917,017	.001	.025	.035	.031	.248	.340	.009	.331	.023	.354	.455	.30	.93
Last 3 months of 1933	33-41	2.9-139.5	3,028,338	.001	.028	.037	.051	.300	.417	.023	.394	.030	.424	.956	.33	1.04
1933	33-41	2.9-139.5	14,962,645	.001	.026	.036	.035	.258	.356	.012	.344	.024	.368	.556	.30	1.04
3-year weighted average	-----	-----	14,580,067	.001	.027	.034	.046	.353	.461	.008	.453	.022	.475	.661	-----	-----

[6] Includes Wilbarger, Wichita, Clay, Montague, Foard, Haskell, Jones, Taylor, Baylor, Archer, Jack, Throckmorton, Young, Shackelford, Stephens, Palo Pinto, Runnels, Callahan, Eastland, Erath, Coleman, Brown, and Comanche Counties.

[7] Includes Limestone, Freestone, and Navarro Counties.

[8] Includes Williamson, Milan, Bexar, Atascosa, and McLennan Counties.

[9] Includes Duval (excluding Government wells), Webb, Zapata, Jim Hogg, and Starr Counties.

[10] Includes Kleberg, Refugio, Jackson, Wharton, Matagorda, Fort Bend, Brazoria, Montgomery, Harris, Liberty, Chambers, Hardin, Orange, and Jefferson Counties.

[11] Includes Upshur, Cherokee, Gregg, Rusk, and Smith Counties.

[12] Includes Van Zandt, Nacogdoches, Shelby, Panola, Harrison, Marion, and San Augustine Counties.

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
TEXAS—Continued																
Other and unclassified																
1931	18–63	2.2–128.7	14,185,944	$0.071	$0.031	$0.057	$0.157	$0.371	$0.687	$0.006	$0.681	$0.182	$0.863	$0.454	$2.43	$202.96
1932	18–63	1.9– 77.8	13,138,638	.090	.030	.028	.128	.206	.482	.004	.478	.190	.668	.679	.28	5.57
First 9 months of 1933	17–63	1.0–531.9	10,999,451	.096	.053	.046	.128	.195	.518	.005	.513	.263	.776	.384	.34	89.19
Last 3 months of 1933	17–63	1.0–531.9	2,919,619	.096	.066	.062	.177	.234	.635	.011	.624	.330	.954	.854	.32	13.18
1933	17–63	1.0–531.9	13,934,620	.096	.056	.049	.139	.203	.543	.007	.536	.277	.813	.482	.25	89.19
3-year weighted average			13,753,067	.085	.039	.045	.142	.262	.573	.005	.568	.216	.784	.535		
TOTAL TEXAS																
1931			214,146,989	.061	.096	.024	.152	.364	.697	.029	.668	.068	.736	.528		
1932			202,910,651	.058	.097	.036	.152	.272	.615	.031	.584	.083	.667	.822		
First 9 months of 1933			180,776,653	.048	.085	.047	.115	.213	.508	.023	.485	.085	.570	.456		
Last 3 months of 1933			52,522,064	.054	.099	.051	.149	.260	.613	.040	.573	.098	.671	.946		
1933			238,966,868	.050	.088	.048	.123	.222	.531	.027	.504	.088	.592	.568		
3-year weighted average			218,674,836	.056	.093	.037	.142	.283	.611	.029	.582	.080	.662	.633		
OKLAHOMA																
Nowata, Rogers, Craig, and Washington Counties																
1931	24–37	.1– 6.5	1,798,099	.117	.157	.008	.344	.208	.834	.025	.809	.093	.902	.588	.13	4.88
1932	24–37	.1– 5.9	2,157,355	.105	.151	.008	.357	.142	.763	.022	.741	.076	.817	.825	.15	3.25
First 9 months of 1933	29–37	.2– 5.0	1,426,651	.112	.164	.010	.313	.145	.744	.019	.725	.073	.798	.460	.15	4.03
Last 3 months of 1933	28–37	.2– 5.0	470,059	.106	.150	.010	.476	.166	.908	.039	.869	.076	.945	.923	−0	2.74
1933	24–37	.2– 5.0	2,008,650	.106	.154	.009	.346	.146	.761	.023	.738	.072	.810	.576	−0	4.03
3-year weighted average			1,988,035	.109	.154	.008	.350	.163	.784	.023	.761	.079	.840	.670		

Tulsa and Creek Counties [13]																
1931	25–44	.1– 74.4	4,945,965	.120	.242	.022	.331	.467	1.182	.067	1.115	.128	1.243	.639	.22	4.47
1932	25–43	.2– 48.0	4,457,325	.115	.233	.033	.330	.328	1.039	.045	.994	.118	1.112	.877	.03	44.47
First 9 months of 1933	25–43	.2– 42.2	2,946,740	.107	.215	.037	.313	.272	.944	.040	.904	.102	1.006	.500	.18	8.76
Last 3 months of 1933	25–43	.2–105.5	1,013,520	.095	.197	.032	.405	.295	1.024	.062	.962	.099	1.061	.994	—0	6.43
1933	25–43	.2–105.5	4,199,510	.103	.211	.036	.332	.267	.949	.044	.905	.099	1.004	.627	—0	8.76
3-year weighted average	------	------	4,534,267	.113	.230	.029	.331	.360	1.063	.053	1.010	.116	1.126	.713	------	------
Wagoner, Muskogee, and McIntosh Counties																
1931	28–42	.1– 18.4	141,617	.131	.157	.006	.467	.307	1.068	.061	1.007	.080	1.087	.635	.52	3.85
1932	34–42	.3– 45.0	132,715	.113	.268	.011	.494	.293	1.179	.027	1.152	.074	1.226	.885	.53	3.69
First 9 months of 1933	34–42	.3– 50.7	103,696	.063	.106	.005	.372	.260	.806	.037	.769	.067	.836	.529	.48	2.64
Last 3 months of 1933	34–42	.3– 50.7	29,729	.058	.084	.008	.492	.382	1.024	.036	.988	.061	1.049	1.035	.03	3.79
1933	34–42	.3– 50.7	135,095	.061	.100	.006	.403	.285	.855	.036	.819	.065	.884	.643	.03	3.79
3-year weighted average	------	------	136,476	.102	.174	.008	.455	.295	1.034	.042	.992	.073	1.065	.718	------	------
Okmulgee, Okfuskee, and Hughes Counties																
1931	25–42	.5– 51.0	1,850,178	.246	.262	.008	.423	.398	1.337	.038	1.299	.201	1.500	.652	.26	13.55
1932	28–42	.2– 56.9	1,918,656	.358	.261	.023	.355	.292	1.289	.030	1.259	.168	1.427	.899	.16	11.72
First 9 months of 1933	29–41	.6– 67.2	1,350,404	.245	.209	.033	.317	.251	1.055	.026	1.029	.138	1.167	.518	.21	7.10
Last 3 months of 1933	29–41	.6–231.4	429,185	.246	.185	.022	.413	.263	1.129	.041	1.088	.128	1.216	1.002	—0	6.25
1933	28–41	.4–231.4	1,870,322	.233	.212	.029	.348	.246	1.068	.031	1.037	.135	1.172	.633	—0	7.10
3-year weighted average	------	------	1,879,719	.280	.245	.020	.375	.311	1.231	.032	1.199	.167	1.366	.730	------	------
Osage County [14]																
1931	29–41	.4– 19.0	4,957,816	.299	.310	.039	.304	.415	1.367	.033	1.329	.209	1.538	.640	.48	7.83
1932	29–41	.3– 50.7	4,676,731	.248	.307	.035	.324	.202	1.206	.024	1.182	.176	1.358	.894	.02	10.24
First 9 months of 1933	29–41	.3–230.0	3,419,038	.220	.227	.043	.307	.244	1.041	.073	.968	.171	1.139	.513	—0	64.39
Last 3 months of 1933	29–41	.3–230.0	1,370,708	.181	.201	.034	.330	.234	.980	.070	.910	.142	1.052	1.013	—0	4.09
1933	29–41	.3–230.0	4,833,682	.208	.218	.040	.313	.240	1.019	.071	.948	.162	1.110	.655	—0	64.39
3-year weighted average	------	------	4,822,743	.253	.278	.038	.313	.317	1.199	.045	1.154	.183	1.337	.728	------	------
Pawnee, Payne, and Lincoln Counties																
1931	33–41	.7–355.0	2,191,390	.236	.310	.025	.341	.351	1.263	.032	1.231	.155	1.386	.685	.38	3.87
1932	32–42	.6–277.0	2,631,316	.209	.248	.029	.242	.272	1.000	.019	.981	.101	1.082	.936	.41	4.19
First 9 months of 1933	33–43	.6–110.0	1,615,047	.182	.208	.044	.270	.212	.916	.015	.901	.097	.998	.546	.27	3.17
Last 3 months of 1933	33–41	.6–110.0	573,550	.214	.189	.045	.275	.236	.959	.025	.934	.091	1.025	1.052	.37	4.63
1933	33–43	.6–110.0	2,188,597	.190	.203	.044	.271	.219	.927	.017	.910	.095	1.005	.679	.27	4.63
3-year weighted average	------	------	2,337,101	.212	.253	.032	.282	.280	1.059	.022	1.037	.116	1.153	.777	------	------

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[13] Excludes Cushing pool.
[14] Excludes Burbank pool.

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
OKLAHOMA—Continued																
Noble, Kay, Logan, Garfield, and Grant Counties																
1931	37–47	1.7– 121.5	5,882,545	$0.104	$0.305	$0.052	$0.319	$0.513	$1.293	$0.054	$1.239	$0.123	$01.362	$0.709	–0	$10.47
1932	37–47	1.3– 127.0	4,712,650	.112	.261	.024	.337	.409	1.143	.034	1.109	.112	1.221	.953	–0	7.10
First 9 months of 1933	37–47	1.3– 563.3	3,399,381	.105	.242	.036	.284	.332	.999	.034	.965	.103	1.068	.586	$0.26	3.39
Last 3 months of 1933	37–47	1.3– 563.3	1,410,927	.071	.171	.034	.314	.360	.950	.041	.909	.083	.992	1.081	.31	4.27
1933	37–47	1.3– 563.3	4,875,361	.094	.223	.035	.294	.336	.982	.035	.947	.100	1.047	.731	.26	4.27
3-year weighted average			5,156,852	.103	.266	.038	.317	.426	1.150	.042	1.108	.112	1.220	.790		
Burbank pool																
1931	36–39	1.5– 21.0	2,216,525	.306	.291	.001	.271	.487	1.356	.082	1.274	.288	1.562	.663	.42	2.88
1932	36–39	1.8– 29.9	2,126,753	.364	.279	.009	.274	.351	1.277	.038	1.239	.300	1.539	.906	.30	2.70
First 9 months of 1933	35–39	1.2– 22.6	1,488,086	.362	.260	.020	.275	.262	1.179	.038	1.141	.295	1.436	.525	.40	2.56
Last 3 months of 1933	36–39	1.2– 22.6	483,182	.314	.266	.022	.358	.319	1.279	.094	1.185	.303	1.488	1.015	.25	2.93
1933	35–39	1.2– 22.6	1,971,268	.350	.261	.021	.295	.276	1.203	.052	1.151	.297	1.448	.645	.25	2.93
3-year weighted average			2,104,849	.339	.278	.010	.280	.375	1.282	.058	1.224	.295	1.519	.739		
Cushing pool																
1931	34–42	1.9– 26.2	5,337,474	.251	.203	.036	.370	.467	1.327	.069	1.258	.142	1.400	.677	.43	4.23
1932	34–42	1.4– 20.8	4,960,874	.207	.169	.031	.351	.341	1.099	.042	1.057	.111	1.168	.937	.44	18.53
First 9 months of 1933	35–42	1.0– 24.3	3,640,299	.199	.149	.033	.333	.282	.996	.040	.956	.107	1.063	.551	.41	2.43
Last 3 months of 1933	35–42	1.0– 24.3	1,209,631	.193	.158	.032	.408	.270	1.061	.087	.974	.108	1.082	1.051	.41	2.63
1933	35–42	1.0– 24.3	4,863,071	.198	.151	.033	.352	.278	1.012	.052	.960	.107	1.067	.676	.41	2.63
3-year weighted average			5,053,806	.220	.175	.033	.358	.365	1.151	.055	1.096	.121	1.217	.762		
Oklahoma City pool																
1931	36–41	24.5–1,032.0	25,778,791	.079	.103	.107	.112	.411	.812	.020	.792	.142	.934	.648	.24	51.26
1932	36–42	11.6– 275.0	17,728,513	.074	.140	.132	.172	.304	.822	.019	.803	.222	1.025	.910	.31	14.34
First 9 months of 1933	34–42	15.6– 736.6	20,274,070	.073	.122	.127	.095	.189	.606	.014	.592	.107	.699	.558	.10	1.87
Last 3 months of 1933	36–42	15.6– 736.6	9,202,110	.079	.113	.123	.152	.182	.649	.034	.615	.105	.720	1.033	.23	2.86
1933	34–42	15.6– 736.6	38,476,180	.075	.120	.126	.108	.187	.616	.018	.598	.106	.704	.671	.10	2.86
3-year weighted average			27,327,828	.076	.119	.121	.123	.283	.722	.019	.703	.143	.846	.716		

Healdton and Hewitt pools																
1931	29–34	1.5–15.0	5,160,545	.104	.109	.005	.197	.430	.845	.018	.827	.082	.909	.528	.19	2.23
1932	29–35	1.5–14.0	4,816,588	.100	.107	.010	.187	.299	.703	.010	.693	.077	.770	.806	.29	1.87
First 9 months of 1933	29–35	1.0–13.0	3,351,588	.099	.098	.005	.178	.237	.617	.012	.605	.073	.678	.432	.25	1.56
Last 3 months of 1933	29–35	1.0–13.0	1,073,380	.086	.092	.006	.233	.279	.696	.027	.669	.076	.745	.910	.34	1.58
1933	29–35	1.0–13.0	4,426,963	.096	.097	.005	.191	.248	.637	.016	.621	.074	.695	.548	.25	1.63
3-year weighted average			4,801,365	.100	.104	.007	.192	.330	.733	.014	.719	.078	.797	.627		
Seminole pool[15]																
1931	29–41	2.2–776.0	49,293,145	.094	.193	.039	.187	.488	1.001	.029	.972	.084	1.056	.687	.23	35.17
1932	29–41	1.7–471.0	42,477,314	.081	.185	.035	.172	.375	.848	.016	.832	.071	.903	.924	.32	9.18
First 9 months of 1933	29–41	1.5–1,383.8	27,874,333	.070	.164	.029	.166	.305	.734	.017	.717	.065	.782	.551	.27	11.68
Last 3 months of 1933	29–41	1.5–1,383.8	9,388,634	.069	.163	.039	.214	.320	.805	.035	.770	.073	.843	1.047	.33	13.70
1933	29–41	1.5–1,383.8	37,612,987	.069	.165	.031	.178	.307	.750	.021	.729	.067	.796	.676	.27	24.60
3-year weighted average			43,127,815	.082	.182	.035	.179	.399	.877	.022	.855	.075	.930	.762		
Other pools in Stephens, Cotton, Murray, Carter, Pontotoc, Garvin, Grady, Caddo, Marshall, Comanche, and Jefferson Counties																
1931	18–42	.5–86.7	7,556,597	.088	.186	.014	.243	.317	.848	.028	.820	.072	.892	.514	.16	33.55
1932	18–42	.3–69.0	6,835,285	.085	.178	.022	.226	.265	.776	.016	.760	.064	.824	.767	.16	8.69
First 9 months of 1933	18–42	.6–54.5	4,459,596	.080	.172	.019	.223	.214	.708	.015	.693	.061	.754	.423	.28	15.14
Last 3 months of 1933	18–42	.4–54.5	1,532,041	.075	.153	.021	.276	.275	.800	.022	.778	.059	.837	.873	.34	5.02
1933	18–42	.4–145.4	6,213,809	.078	.164	.019	.235	.223	.719	.017	.702	.060	.762	.536	.21	15.14
3-year weighted average			6,868,563	.084	.177	.018	.235	.271	.785	.021	.764	.066	.830	.605		
Other[16] *and unclassified*																
1931	33–40	.6–16.3	4,837,539	.168	.411	.105	.348	.434	1.466	.046	1.420	.164	1.584	.637	.30	15.06
1932	33–40	.5–10.2	3,342,968	.169	.348	.154	.354	.318	1.343	.040	1.303	.171	1.474	.885	.49	2.98
First 9 months of 1933	34–40	.3–10.1	2,182,284	.174	.353	.212	.307	.265	1.311	.069	1.242	.160	1.402	.520	.44	2.60
Last 3 months of 1933	34–40	.3–18.1	727,955	.182	.339	.110	.383	.323	1.337	.050	1.287	.161	1.448	1.017	.35	2.56
1933	34–40	.3–18.1	2,910,239	.176	.349	.187	.326	.279	1.317	.064	1.253	.161	1.414	.644	.35	2.60
3-year weighted average			3,696,915	.170	.376	.141	.344	.359	1.390	.049	1.341	.165	1.506	.714		
TOTAL OKLAHOMA																
1931			121,948,226	.120	.196	.050	.216	.445	1.027	.033	.994	.117	1.111	.653		
1932			102,975,043	.115	.193	.051	.224	.335	.918	.022	.896	.118	1.014	.901		
First 9 months of 1933			86,531,213	.100	.162	.066	.180	.248	.756	.022	.734	.096	.830	.537		
Last 3 months of 1933			28,914,611	.098	.154	.063	.239	.262	.816	.040	.776	.096	.872	1.023		
1933			116,585,734	.099	.160	.065	.195	.250	.769	.026	.743	.096	.839	.658		
3-year weighted average			113,836,334	.111	.183	.058	.212	.345	.909	.027	.882	.110	.992	.729		

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[15] Includes Pottawatomie and Seminole Counties.

[16] Includes Kiowa, Beckham, and Cimarron pools.

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
KANSAS																
Butler and Harvey Counties																
1931	30–40	0.7– 75.0	5,374,530	$0.086	$0.277	$0.041	$0.338	$0.406	$1.148	$0.010	$1.138	$0.090	$1.228	$0.625	$0.23	$21.08
1932	28–41	.7–349.0	4,754,788	.074	.312	.039	.328	.300	1.053	.010	1.043	.091	1.134	.871	.02	15.64
First 9 months of 1933	33–42	1.0–292.0	4,195,537	.065	.262	.054	.270	.201	.852	.008	.844	.061	.905	.525	.24	9.13
Last 3 months of 1933	33–42	1.0–292.0	1,456,202	.061	.264	.056	.355	.199	.935	.008	.927	.058	.985	.994	.26	11.49
1933	33–42	1.0–292.0	5,656,809	.064	.263	.054	.292	.201	.874	.009	.865	.060	.925	.646	.24	11.49
3-year weighted average			5,262,042	.074	.282	.045	.319	.301	1.021	.009	1.012	.079	1.091	.707		
Greenwood and Woodson Counties																
1931	29–41	.9– 25.0	2,065,779	.147	.282	.013	.258	.385	1.085	.020	1.065	.146	1.211	.713	.27	6.54
1932	29–41	.5– 15.0	1,803,042	.147	.249	.022	.276	.299	.993	.011	.982	.143	1.125	.934	.31	2.75
First 9 months of 1933	29–41	.5– 36.4	1,190,266	.166	.268	.040	.272	.260	1.006	.044	.962	.131	1.093	.561	.32	2.94
Last 3 months of 1933	29–41	.5– 36.4	434,410	.134	.262	.032	.331	.269	1.028	.042	.986	.122	1.108	1.026	.61	3.77
1933	29–41	.5– 36.4	1,650,620	.157	.264	.038	.288	.259	1.006	.043	.963	.128	1.091	.685	.61	3.77
3-year weighted average			1,839,814	.150	.266	.023	.273	.319	1.031	.024	1.007	.140	1.147	.777		
East Kansas [17]																
1931	18–37	.2– 58.0	2,315,433	.169	.262	.050	.322	.423	1.226	.024	1.202	.156	1.358	.625	.35	4.01
1932	18–37	.3– 41.8	1,959,693	.168	.281	.021	.339	.281	1.090	.022	1.068	.114	1.182	.862	.01	1.85
First 9 months of 1933	18–37	.1– 26.8	1,595,012	.130	.232	.042	.261	.244	.909	.020	.889	.123	1.012	.520	.40	2.22
Last 3 months of 1933	18–42	.1–125.0	609,108	.106	.192	.038	.300	.249	.885	.025	.860	.108	.968	1.002	.42	2.09
1933	18–42	.1–125.0	2,270,629	.119	.217	.040	.271	.240	.887	.021	.866	.116	.982	.652	.36	2.22
3-year weighted average			2,181,918	.152	.252	.038	.309	.317	1.068	.023	1.045	.129	1.174	.705		

Sedgwick County																
1931	38–42	8.9–304.5	3,502,495	.046	.138	.044	.230	.551	1.009	.026	.983	.065	1.048	.709	.29	4.45
1932	38–42	7.9–147.5	2,731,009	.060	.132	.070	.248	.408	.918	.029	.889	.074	.963	.978	.36	1.78
First 9 months of 1933	38–42	6.1–122.0	2,000,483	.044	.127	.058	.227	.347	.803	.025	.778	.068	.846	.562	.38	1.91
Last 3 months of 1933	36–42	6.1–122.0	483,467	.051	.123	.061	.278	.336	.849	.047	.802	.095	.897	1.074	.42	1.88
1933	36–42	6.1–122.0	2,483,950	.045	.126	.059	.237	.345	.812	.029	.783	.073	.856	.662	.38	1.91
3-year weighted average	------	------	2,905,818	.050	.133	.056	.238	.447	.924	.027	.897	.070	.967	.780	------	------
Sumner and Cowley Counties																
1931	34–41	2.6–126.0	2,611,415	.113	.296	.011	.222	.642	1.284	.018	1.266	.115	1.381	.664	.35	10.92
1932	34–42	2.1– 70.2	2,637,776	.096	.249	.033	.201	.324	.903	.010	.893	.098	.991	.922	.31	7.27
First 9 months of 1933	34–41	3.0– 68.0	1,654,470	.178	.217	.216	.200	.253	1.064	.008	1.056	.101	1.157	.542	.32	6.66
Last 3 months of 1933	34–41	3.0– 68.0	435,556	.097	.287	.030	.307	.286	1.007	.025	.982	.124	1.106	1.060	.45	5.05
1933	34–41	3.0– 68.0	2,090,026	.161	.232	.177	.222	.260	1.052	.012	1.040	.106	1.146	.650	.32	6.66
3-year weighted average	------	------	2,446,406	.120	.261	.066	.215	.419	1.081	.013	1.068	.106	1.174	.753	------	------
Rice, Reno, Ellsworth, Kingman, Rush, Barton, Russell, Trego, Ellis, and Rooks Counties																
1931	22–43	4.5–134.0	1,525,052	.084	.174	.069	.171	.391	.889	.022	.867	.096	.963	.649	.53	5.21
1932	22–48	.8–580.7	2,074,635	.078	.140	.076	.161	.261	.716	.014	.702	.090	.792	.904	.19	30.32
First 9 months of 1933	28–47	1.0–291.8	1,849,630	.072	.132	.083	.158	.194	.639	.016	.623	.076	.699	.550	.30	28.43
Last 3 months of 1933	28–47	1.0–291.8	815,310	.074	.116	.059	.209	.233	.691	.015	.676	.058	.734	1.040	.33	16.98
1933	28–47	1.0–291.8	2,664,940	.073	.127	.075	.174	.206	.655	.016	.629	.070	.709	.700	.30	28.43
3-year weighted average	------	------	2,088,209	.077	.143	.074	.169	.269	.732	.017	.715	.083	.798	.755	------	------
McPherson County																
1931	33–42	2.9–385.0	3,432,647	.033	.120	.046	.145	.506	.850	.026	.824	.048	.872	.685	.24	11.59
1932	33–42	5.5–145.0	3,603,946	.044	.126	.066	.152	.275	.663	.031	.632	.073	.705	.926	.24	2.43
First 9 months of 1933	33–42	4.2–319.0	4,092,969	.071	.103	.124	.123	.223	.644	.012	.632	.056	.688	.556	.23	3.17
Last 3 months of 1933	33–42	4.2–319.0	1,169,487	.052	.126	.099	.216	.290	.783	.019	.764	.066	.830	1.038	.24	4.85
1933	33–42	4.2–319.0	5,342,004	.069	.107	.121	.143	.234	.674	.013	.661	.057	.718	.664	.23	4.85
3-year weighted average	------	------	4,126,199	.052	.116	.084	.146	.321	.719	.022	.697	.060	.757	.746	------	------
Other and unclassified																
1931	34–40	1.6– 15.3	4,493,622	.074	.279	.113	.219	.385	1.070	.014	1.056	.131	1.187	.685	.54	36.13
1932	34–40	1.7– 76.7	2,853,664	.087	.301	.142	.285	.288	1.103	.022	1.081	.172	1.253	.931	.34	7.33
First 9 months of 1933	31–40	3.6–201.8	2,469,763	.079	.306	.131	.231	.210	.957	.030	.927	.133	1.060	.549	.25	5.82
Last 3 months of 1933	35–40	3.6–201.8	870,585	.077	.309	.133	.275	.233	1.027	.036	.991	.126	1.117	1.047	–0	2.39
1933	31–40	3.6–201.8	3,340,348	.078	.307	.131	.243	.216	.975	.031	.944	.131	1.075	.679	–0	5.82
3-year weighted average	------	------	3,562,545	.079	.294	.126	.244	.306	1.049	.021	1.028	.142	1.170	.749	------	------

[17] Includes Douglas, Franklin, Miami, Anderson, Linn, Chase, Chautauqua, Elk, Allen, Bourbon, Neosho, LaBette, Crawford, Wilson, Marion, and Montgomery Counties.

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
KANSAS—Continued																
TOTAL KANSAS																
1931			25, 320, 973	$0.086	$0.232	$0.052	$0.246	$0.459	$1.075	$0.019	$1.056	$0.102	$1.158	$0.668		
1932			22, 418, 553	.086	.228	.060	.251	.305	.930	.019	.911	.104	1.015	.914		
First 9 months of 1933			19, 048, 130	.088	.201	.095	.211	.233	.828	.017	.811	.084	.895	.545		
Last 3 months of 1933			6, 274, 125	.074	.209	.070	.283	.252	.888	.023	.865	.085	.950	1.029		
1933			25, 499, 326	.085	.202	.089	.229	.236	.841	.019	.822	.084	.906	.665		
3-year weighted average			24, 412, 951	.086	.220	.067	.241	.335	.949	.019	.930	.096	1.026	.742		
ARKANSAS																
El Dorado pool																
1931	27–33	2.0– 15.6	538, 067	.241	.250		.490	.300	1.281	.116	1.165	.084	1.249	.554	$0.38	$05.03
1932	27–34	1.7– 15.7	474, 893	.131	.178	.002	.529	.206	1.046	.082	.964	.068	1.032	.774	.31	4.48
First 9 months of 1933	27–34	1.7– 15.2	305, 884	.040	.154		.506	.168	.868	.088	.780	.057	.837	.414	.45	1.10
Last 3 months of 1933	20–34	1.7– 15.2	119, 237	.039	.148	.002	.661	.186	1.036	.155	.881	.071	.952	.859	.32	1.17
1933	20–34	1.7– 15.7	425, 121	.040	.152	.001	.549	.173	.915	.107	.808	.061	.869	.539	.32	1.17
3-year weighted average			496, 027	.148	.199	.001	.519	.234	1.101	.102	.999	.072	1.071	.620		
Smackover pool																
1931	19–27	1.9– 20.8	6, 209, 927	.061	.193	.003	.387	.348	.992	.016	.976	.063	1.039	.488	.63	2.07
1932	19–27	3.2– 17.8	4, 985, 347	.056	.171	.010	.406	.227	.870	.008	.862	.060	.922	.618	.45	1.87
First 9 months of 1933	19–33	3.5– 15.8	3, 847, 099	.066	.183	.016	.416	.166	.847	.022	.825	.053	.878	.307	.50	2.87
Last 3 months of 1933	20–38	3.5– 15.8	1, 070, 656	.080	.165	.017	.511	.184	.957	.012	.945	.052	.997	.709	.62	2.66
1933	19–38	1.9– 20.8	4, 917, 755	.069	.179	.016	.437	.170	.871	.020	.851	.052	.903	.394	.50	2.87
3-year weighted average			5, 371, 010	.062	.182	.009	.408	.256	.917	.015	.902	.059	.961	.500		
Other pools																
1931	13–35	1.0– 25.0	2, 990, 185	.111	.287	.023	.438	.379	1.238	.027	1.211	.095	1.306	.483	.57	9.81
1932	13–36	1.5– 38.9	2, 520, 907	.129	.273	.026	.434	.245	1.107	.027	1.080	.079	1.159	.614	.29	3.72
First 9 months of 1933	17–36	1.4– 23.0	1, 171, 747	.052	.152	.011	.355	.235	.805	.016	.789	.059	.848	.375	.36	2.49
Last 3 months of 1933	17–36	1.4– 23.0	496, 915	.080	.185	.024	.545	.221	1.055	.024	1.031	.066	1.097	.715	.48	2.41
1933	13–36	1.0– 38.9	1, 720, 436	.060	.157	.015	.407	.226	.865	.018	.847	.061	.908	.478	.36	2.49
3-year weighted average			2, 410, 509	.106	.251	.022	.429	.296	1.104	.025	1.079	.081	1.160	.528		

TOTAL ARKANSAS															
1931	-------	-------	9,788,179	.088	.225	.009	.408	.355	1.085	.026	1.059	.074	1.133	.491	-------	-------
1932	-------	-------	7,981,147	.084	.204	.014	.422	.231	.955	.018	.937	.067	1.004	.626	-------	-------
First 9 months of 1933	-------	-------	5,324,730	.061	.175	.014	.408	.181	.839	.025	.814	.055	.869	.328	-------	-------
Last 3 months of 1933	-------	-------	1,686,808	.077	.170	.019	.531	.195	.992	.026	.966	.057	1.023	.722	-------	-------
1933	-------	-------	7,063,312	.065	.172	.015	.437	.184	.873	.025	.848	.055	.903	.424	-------	-------
3-year weighted average	-------	-------	8,277,546	.080	.203	.012	.421	.267	.983	.023	.960	.066	1.026	.515	-------	-------
LOUISIANA																
Red River, De Soto, Elm Grove, Pleasant Hill, Zwolle, and Urania pools																
1931	18-42	5.7- 149.5	3,430,431	.274	.135	.010	.377	.267	1.063	.018	1.045	.100	1.145	.643	.28	5.92
1932	18-42	6.9- 138.3	2,491,271	.169	.153	.016	.423	.242	1.003	.016	.987	.114	1.101	.801	.23	14.94
First 9 months of 1933	21-42	2.6- 277.5	1,875,750	.131	.119	.022	.368	.164	.804	.011	.793	.096	.889	.464	.20	3.11
Last 3 months of 1933	21-42	2.6- 277.5	611,750	.063	.139	.026	.480	.198	.906	.013	.893	.097	.990	.887	.36	4.18
1933	21-42	2.6- 277.5	2,579,205	.112	.121	.026	.393	.170	.822	.012	.810	.096	.906	.572	.20	4.18
3-year weighted average	-------	-------	2,833,636	.194	.136	.016	.396	.230	.972	.015	.957	.103	1.060	.668	-------	-------
Haynesville, Homer, Cotton Valley, Sarepta, and Carterville pools																
1931	20-43	1.6- 49.1	2,854,527	.148	.262	.034	.486	.368	1.298	.053	1.245	.093	1.338	.642	.28	8.46
1932	20-43	2.0- 36.8	2,227,892	.109	.173	.022	.407	.281	.992	.033	.959	.083	1.042	.856	.38	14.43
First 9 months of 1933	20-43	1.9- 17.0	1,357,504	.074	.135	.025	.417	.215	.866	.028	.838	.074	.912	.444	.43	5.27
Last 3 months of 1933	20-43	1.9- 17.0	435,741	.053	.126	.021	.484	.222	.906	.051	.855	.076	.931	.915	.45	5.51
1933	20-43	1.9- 19.0	1,887,380	.069	.133	.023	.427	.211	.863	.032	.831	.075	.906	.559	.30	5.51
3-year weighted average	-------	-------	2,323,266	.114	.199	.027	.445	.298	1.083	.041	1.042	.085	1.127	.688	-------	-------
Caddo pool																
1931	24-41	3.1- 145.7	1,278,443	.057	.183	-------	.577	.318	1.135	.057	1.078	.073	1.151	.639	.76	4.76
1932	24-41	2.6- 140.7	1,017,588	.047	.158	-------	.601	.230	1.036	.065	.971	.072	1.044	.863	.75	1.62
First 9 months of 1933	27-41	2.6- 102.6	687,658	.028	.145	-------	.625	.206	1.004	.074	.930	.066	.996	.449	.70	1.28
Last 3 months of 1933	27-41	2.9- 102.6	224,132	.018	.126	-------	.787	.223	1.154	.086	1.068	.066	1.134	.920	.81	1.88
1933	27-41	2.6- 102.6	911,790	.025	.141	-------	.665	.210	1.041	.077	.964	.066	1.030	.565	.70	1.88
3-year weighted average	-------	-------	1,069,274	.044	.163	-------	.610	.260	1.077	.065	1.012	.070	1.082	.689	-------	-------
Louisiana Gulf coast [18]																
1931	17-39	3.1- 557.5	7,815,570	.060	.163	.027	.289	.342	.881	.016	.865	.070	.935	.653	.16	30.73
1932	17-41	2.0- 527.4	9,840,301	.030	.118	.037	.241	.250	.676	.037	.639	.057	.696	.835	.39	37.21
First 9 months of 1933	17-41	.4-1,183.5	9,315,814	.035	.085	.058	.201	.226	.605	.023	.582	.052	.634	.540	.32	10.18
Last 3 months of 1933	17-41	.4-1,183.5	3,590,762	.043	.108	.050	.245	.251	.697	.015	.682	.045	.727	.988	.27	4.99
1933	17-41	.4-1,183.5	13,015,610	.037	.091	.056	.215	.231	.630	.020	.610	.049	.659	.665	.27	10.18
3-year weighted average	-------	-------	10,223,827	.041	.118	.0	42.242	.266	.709	.025	.684	.057	.741	.716	-------	-------

[18] Includes Black Bayou, Choctaw, Edgerly, Hackberry, Jennings, Lake Barre, Leesville, Lockport, Port Barre, Sorrento, Starks, Sulphur, Sweetlake, Vinton, White Castle, Cameron Meadows, Gueydan, Iowa, Lake Washington, Lake Pelto, and Caillow Island pools.

Table 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
LOUISIANA—Continued																
TOTAL LOUISIANA																
1931			15,378,971	$0.124	$0.177	$0.022	$0.369	$0.328	$1.020	$0.027	$0.993	$0.082	$1.075	$0.648		
1932			15,577,052	.065	.134	.029	.317	.252	.797	.035	.762	.071	.833	.834		
First 9 months of 1933			13,236,726	.052	.098	.047	.269	.215	.681	.025	.656	.061	.717	.515		
Last 3 months of 1933			4,862,385	.045	.114	.042	.321	.241	.763	.021	.742	.056	.798	.965		
1933			18,393,985	.050	.102	.045	.284	.220	.701	.023	.678	.060	.738	.636		
3-year weighted average			16,450,003	.077	.136	.033	.321	.264	.831	.028	.803	.070	.873	.702		
NEW MEXICO																
Hobbs pool																
1931	33–36	104.6–365.3	9,023,097	.012	.053	.015	.039	.521	.640	.014	.626	.034	.660	.410	$0.47	$1.28
1932	32–36	36.3–176.6	7,480,761	.007	.065	.023	.042	.381	.518	.015	.503	.040	.543	.605	.24	1.17
First 9 months of 1933	32–36	64.1–256.8	6,169.542	.007	.061	.041	.067	.290	.466	.014	.452	.039	.491	.337	.36	1.06
Last 3 months of 1933	32–36	64.1–256.8	2,298,818	.011	.057	.058	.084	.330	.520	.026	.494	.035	.529	.750	.40	1.57
1933	32–36	64.1–256.8	8,468,360	.008	.060	.040	.072	.300	.480	.017	.463	.038	.501	.449	.36	1.57
3-year weighted average			8,324,073	.009	.059	.026	.051	.404	.549	.015	.534	.037	.571	.481		
Other pools in Eddy and Lea Counties																
1931	26–60	1.3–564.0	1,375,209	.027	.110	.026	.102	.445	.710	.046	.664	.056	.720	.412	.28	9.15
1932	26–60	1.1–418.2	1,192,104	.034	.093	.033	.106	.296	.562	.025	.537	.063	.600	.616	.34	3.73
First 9 months of 1933	26–60	1.2–221.6	1,069,336	.034	.085	.044	.123	.254	.540	.034	.506	.055	.561	.331	.35	3.06
Last 3 months of 1933	26–60	1.2–221.6	399,738	.031	.083	.056	.190	.239	.599	.044	.555	.049	.604	.745	.35	2.81
1933	26–60	1.2–221.6	1,469,074	.033	.084	.047	.142	.250	.556	.037	.519	.053	.572	.443	.35	3.06
3-year weighted average			1,345,462	.031	.096	.036	.117	.330	.610	.037	.573	.057	.630	.484		

San Juan and McKinley Counties																
1931	31–61	35. 0–348. 5	1, 792, 707	. 086	. 103	. 061	. 074	. 462	. 786	. 014	. 772	. 144	. 916	. 479	. 40	2. 75
1932	31–61	24. 4–100. 5	1, 198, 382	. 099	. 119	. 102	. 094	. 308	. 722	. 014	. 708	. 199	. 907	. 654	. 19	3. 34
First 9 months of 1933	31–61	4. 6–248. 5	934, 154	. 094	. 105	. 096	. 099	. 264	. 658	. 012	. 646	. 179	. 825	. 384	. 50	3. 13
Last 3 months of 1933	31–61	4. 6–248. 5	338, 352	. 102	. 105	. 095	. 105	. 319	. 726	. 017	. 709	. 164	. 873	. 805	. 50	2. 88
1933	31–61	4. 6–248. 5	1, 272, 506	. 096	. 105	. 096	. 101	. 279	. 677	. 014	. 663	. 175	. 838	. 496	. 50	3. 13
3-year weighted average	----	----	1, 421, 198	. 093	. 108	. 083	. 088	. 363	. 735	. 014	. 721	. 169	. 890	. 533	----	----
TOTAL NEW MEXICO																
1931	----	----	12, 191, 013	. 025	. 067	. 023	. 051	. 504	. 670	. 018	. 652	. 052	. 704	. 420	----	----
1932	----	----	9, 871, 247	. 021	. 075	. 034	. 056	. 362	. 548	. 016	. 532	. 062	. 594	. 612	----	----
First 9 months of 1933	----	----	8, 173, 032	. 021	. 069	. 048	. 078	. 282	. 498	. 017	. 481	. 057	. 538	. 341	----	----
Last 3 months of 1933	----	----	3, 036, 908	. 024	. 065	. 047	. 100	. 317	. 553	. 027	. 526	. 051	. 577	. 755	----	----
1933	----	----	11, 209, 940	. 022	. 068	. 047	. 084	. 292	. 513	. 019	. 494	. 055	. 549	. 453	----	----
3-year weighted average	----	----	11, 090, 733	. 023	. 070	. 034	. 064	. 390	. 581	. 018	. 563	. 056	. 619	. 488	----	----
TEXAS, OKLAHOMA, KANSAS, ARKANSAS, LOUISIANA, AND NEW MEXICO COMBINED																
1931	----	----	398, 774, 351	. 082	. 140	. 036	. 190	. 397	. 845	. 029	. 816	. 085	. 901	. 576	----	----
1932	----	----	361, 733, 693	. 076	. 135	. 041	. 189	. 293	. 734	. 027	. 707	. 093	. 800	. 840	----	----
First 9 months of 1933	----	----	313, 090, 484	. 065	. 115	. 055	. 149	. 225	. 609	. 022	. 587	. 086	. 673	. 481	----	----
Last 3 months of 1933	----	----	97, 296, 901	. 067	. 123	. 055	. 198	. 260	. 703	. 037	. 666	. 092	. 758	. 965	----	----
1933	----	----	417, 719, 165	. 065	. 117	. 055	. 161	. 231	. 629	. 026	. 603	. 087	. 690	. 596	----	----
3-year weighted average	----	----	392, 742, 403	. 074	. 130	. 044	. 179	. 307	. 734	. 027	. 707	. 088	. 795	. 664	----	----
WYOMING																
Salt Creek pool																
1931	30–37	1. 9– 61. 0	6, 252, 600	. 374	. 233	. 078	. 296	. 144	1. 125	. 062	1. 063	. 210	1. 273	1. 047	. 32	5. 22
1932	30–37	. 8– 63. 0	5, 361, 952	. 359	. 197	. 078	. 282	. 131	1. 047	. 066	. 981	. 193	1. 174	1. 134	. 23	1. 96
First 9 months of 1933	30–37	1. 5– 64. 0	3, 554, 815	. 357	. 178	. 078	. 277	. 134	1. 024	. 039	. 985	. 178	1. 163	. 955	. 26	2. 40
Last 3 months of 1933	30–37	1. 5– 64. 0	1, 682, 890	. 287	. 177	. 055	. 274	. 134	. 927	. 074	. 853	. 131	. 984	. 903	. 22	2. 31
1933	30–37	1. 5– 64. 0	5, 351, 297	. 331	. 179	. 069	. 275	. 133	. 987	. 050	. 937	. 165	1. 102	. 931	. 22	2. 40
3-year weighted average	----	----	5, 655, 283	. 356	. 204	. 074	. 285	. 137	1. 056	. 059	. 997	. 190	1. 187	1. 038	----	----
Lost Soldier pool																
1931	29–29	53. 7– 77. 7	1, 222, 797	. 033	. 086	. 001	. 106	. 178	. 404	. 010	. 394	. 051	. 445	. 564	. 29	. 45
1932	29–29	14. 6– 49. 6	755, 543	. 032	. 274	. 001	. 133	. 348	. 788	. 030	. 758	. 033	. 791	. 800	. 27	. 81
First 9 months of 1933	29–29	24. 7– 35. 0	394, 286	. 033	. 590	. 002	. 141	. 273	1. 039	. 010	1. 029	. 072	1. 101	. 382	. 28	1. 13
Last 3 months of 1933	29–29	24. 7– 35. 0	130, 886	. 030	. 546	. 003	. 162	. 268	1. 009	. 016	. 993	. 072	1. 065	. 864	. 35	1. 09
1933	29–29	24. 7– 35. 0	525, 172	. 032	. 579	. 002	. 146	. 272	1. 031	. 011	1. 020	. 072	1. 092	. 502	. 28	1. 13
3-year weighted average	----	----	801, 171	. 033	. 253	. 001	. 123	. 252	. 662	. 017	. 645	. 050	. 695	. 625	----	----

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
WYOMING—Continued																
Other pools																
1931	14–43	0.9–304.9	2,625,774	$0.110	$0.200	$0.007	$0.522	$0.264	$1.103	$0.037	$1.066	$0.160	$1.226	$0.715	—0	$3.50
1932	14–43	.7–205.4	2,415,221	.100	.180	.017	.504	.236	1.037	.027	1.010	.139	1.149	.709	$0.35	2.61
First 9 months of 1933	14–40	.8–127.6	1,448,292	.108	.197	.020	.476	.174	.975	.028	.947	.158	1.105	.490	.33	5.82
Last 3 months of 1933	14–40	.8–127.6	497,129	.145	.205	.011	.568	.190	1.119	.042	1.077	.139	1.216	.788	.21	2.95
1933	14–40	.8–127.6	2,128,034	.113	.199	.024	.490	.170	.996	.038	.958	.163	1.121	.569	.21	5.82
3-year weighted average			2,389,676	.108	.193	.015	.506	.227	1.049	.034	1.015	.154	1.169	.669		
TOTAL WYOMING																
1931			10,001,171	.266	.208	.050	.333	.181	1.038	.049	.989	.179	1.168	.906		
1932			8,532,716	.256	.199	.054	.332	.180	1.021	.052	.969	.163	1.132	.984		
First 9 months of 1933			5,397,393	.266	.213	.057	.321	.155	1.012	.034	.978	.165	1.143	.788		
Last 3 months of 1933			2,310,905	.242	.204	.043	.331	.153	.973	.064	.909	.129	1.038	.876		
1933			8,004,503	.253	.211	.053	.324	.151	.992	.044	.948	.159	1.107	.807		
3-year weighted average			8,846,130	.259	.205	.053	.330	.172	1.019	.048	.971	.167	1.138	.901		
MONTANA																
Cat Creek pool																
1931	50–50	7.0– 8.1	93,795	.001	.112		.404	.266	.783	.017	.766	.027	.793	1.375	.74	.85
1932	50–50	7.0– 7.0	74,817	.002	.132		.364	.339	.837	.022	.815	.024	.839	1.310	.83	.85
1933	50–50	6.8– 6.8	39,569	.004	.235		.246	.260	.745	.045	.700	.030	.730	1.371	.73	.73
3-year weighted average			69,394	.003	.142		.359	.291	.795	.024	.771	.026	.797	1.351		
Pondera pool																
1931	28–35	3.1– 16.2	518,690	.097	.266	.011	.390	.351	1.115	.023	1.092	.134	1.226	.814	.78	1.89
1932	28–35	2.7– 50.0	410,297	.139	.308	.017	.381	.302	1.147	.038	1.109	.137	1.246	.906	.80	1.74
First 9 months of 1933	28–35	2.0– 11.4	262,790	.154	.290	.017	.364	.218	1.043	.036	1.007	.125	1.132	.779	.48	1.73
Last 3 months of 1933	28–35	2.0– 11.4	80,784	.161	.305	.012	.436	.233	1.147	.023	1.124	.136	1.260	1.188	.63	1.68
1933	28–35	2.0– 11.4	357,088	.160	.291	.015	.375	.222	1.063	.031	1.032	.127	1.159	.872	.48	1.73
3-year weighted average			428,692	.128	.286	.014	.383	.300	1.111	.030	1.081	.133	1.214	.860		

Kevin-Sunburst pool																
1931	29-36	1.9- 10.0	366,400	.127	.198	.044	.447	.269	1.085	.092	.993	.248	1.241	.984	.32	1.75
1932	29-36	1.9- 7.0	284,383	.124	.246	.045	.467	.260	1.142	.072	1.070	.288	1.358	1.002	.49	2.39
First 9 months of 1933	29-33	1.3- 6.2	179,131	.078	.217	.045	.430	.177	.947	.072	.875	.287	1.162	.841	.42	2.45
Last 3 months of 1933	29-33	1.3- 6.2	55,284	.151	.333	.046	.634	.343	1.507	.211	1.296	.310	1.606	1.341	.62	2.48
1933	29-36	1.3- 6.2	248,821	.100	.237	.042	.466	.219	1.064	.100	.964	.283	1.247	.965	.42	2.48
3-year weighted average			299,868	.119	.224	.044	.459	.252	1.098	.088	1.010	.270	1.280	.985		
Other pools																
1931	44-52	6.4- 19.0	253,680	.065	.383	.137	.666	.373	1.624	.028	1.596	.208	1.804	.966	1.74	2.72
1932	40-52	3.7- 18.0	283,494	.033	.304	.246	.757	.208	1.548	.085	1.463	.350	1.813	1.163	1.03	3.58
First 9 months of 1933	30-52	5.1- 43.0	209,099	.037	.281	.276	.628	.176	1.398	.092	1.306	.519	1.825	.945	.16	3.07
Last 3 months of 1933	30-52	5.1- 43.0	100,151	.025	.227	.194	.370	.198	1.014	.124	.890	.368	1.258	1.368	−0	2.94
1933	30-52	5.1- 43.0	309,250	.033	.263	.250	.544	.184	1.274	.102	1.172	.470	1.642	1.082	−0	3.07
3-year weighted average			282,141	.043	.313	.215	.652	.248	1.471	.074	1.397	.351	1.748	1.074		
TOTAL MONTANA																
1931			1,232,565	.092	.258	.046	.465	.325	1.186	.044	1.142	.175	1.317	.939		
1932			1,052,991	.097	.278	.085	.504	.268	1.232	.069	1.173	.227	1.400	1.030		
First 9 months of 1933			651,020	.096	.267	.108	.467	.193	1.131	.064	1.067	.296	1.363	.850		
Last 3 months of 1933			236,219	.101	.279	.097	.454	.244	1.175	.110	1.065	.275	1.340	1.300		
1933			954,728	.097	.266	.098	.448	.210	1.119	.073	1.046	.275	1.321	.985		
3-year weighted average			1,080,095	.095	.266	.074	.473	.273	1.181	.057	1.124	.221	1.345	.982		
COLORADO																
Fort Collins and Wellington pools																
1931	33-37	14.7- 28.9	289,525	.277	.565	.158	.344	.386	1.730	.180	1.550	.424	1.974	.553	1.75	5.50
1932	33-37	18.7- 23.9	236,228	.351	.669	.191	.353	.307	1.871	.097	1.774	.459	2.233	.777	2.02	5.95
First 9 months of 1933	33-37	20.9- 22.1	138,084	.014	.812	.092	.338	.288	1.544	.037	1.507	.393	1.900	.413	1.64	2.88
Last 3 months of 1933	33-37	20.9- 22.1	43,830	.025	.838		.289	.302	1.454	.042	1.412	.412	1.824	.893	1.71	2.14
1933	33-37	20.9- 22.1	181,914	.017	.818	.070	.326	.291	1.522	.038	1.484	.398	1.882	.528	1.64	2.88
3-year weighted average			235,889	.235	.665	.147	.342	.335	1.724	.116	1.608	.429	2.037	.621		
Iles pool																
1931	31-31	48.0- 64.0	286,721	.052	.214		.120	.377	.763	.008	.755	.077	.832	.505	.74	1.22
1932	31-31	31.9- 40.8	178,269	.092	.307		.161	.368	.928	.017	.911	.095	1.006	.582	.98	1.08
First 9 months of 1933	31-33	40.3- 52.4	98,248	.102	.219		.198	.281	.800	.014	.786	.105	.891	.422	.81	1.06
Last 3 months of 1933	31-33	40.3- 52.4	44,193	.093	.169	.073	.179	.287	.801	.016	.785	.078	.863	.898	.87	.87
1933	31-33	40.3- 52.4	142,441	.099	.204	.023	.192	.283	.801	.015	.786	.096	.882	.570	.75	1.01
3-year weighted average			202,477	.074	.239	.005	.149	.353	.820	.012	.808	.087	.895	.543		

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*—Continued

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highest
COLORADO—Continued																
Moffat pool																
1931	39–39	62.0– 62.0	190,096	$0.008	$0.157	$0.040	$0.243	$0.494	$0.942	$0.004	$0.938	$0.080	$1.018	$0.557	$1.02	$1.02
1932	39–39	52.0– 52.0	139,718	.011	.221	.041	.266	.322	.861	.015	.846	.102	.948	.892	.95	.95
First 9 months of 1933	39–39	35.5– 35.5	95,925	.003	.211	.045	.242	.279	.780	.003	.777	.090	.867	.534	.87	.87
Last 3 months of 1933	39–39	35.5– 35.5	28,435	.007	.212	.047	.290	.279	.835	.012	.823	.102	.925	1.054	.92	.92
1933	39–39	35.5– 35.5	124,360	.004	.211	.046	.252	.279	.792	.005	.787	.093	.880	.653	.87	.92
3-year weighted average			151,391	.008	.191	.042	.253	.382	.876	.007	.869	.090	.959	.686		
Other pools																
1931	30–51	3.6–369.1	421,201	.171	.211	.069	.327	.372	1.150	.032	1.118	.137	1.255	.664	.81	4.45
1932	30–41	1.6–124.3	314,062	.150	.259	.100	.377	.325	1.211	.041	1.170	.154	1.324	.846	.74	2.39
First 9 months of 1933	30–43	2.3– 64.2	188,878	.183	.350	.085	.355	.296	1.269	.022	1.247	.161	1.408	.554	.36	3.01
Last 3 months of 1933	30–43	2.6– 64.2	53,258	.213	.378	.090	.372	.276	1.329	.030	1.299	.191	1.490	1.004	.32	7.96
1933	30–43	2.3– 64.2	242,136	.190	.356	.086	.359	.292	1.283	.024	1.259	.168	1.427	.653	.32	7.96
3-year weighted average			325,800	.169	.202	.083	.351	.337	1.202	.033	1.169	.150	1.319	.720		
TOTAL COLORADO																
1931			1,187,543	.142	.290	.069	.267	.396	1.164	.057	1.107	.183	1.290	.581		
1932			868,277	.170	.374	.095	.308	.329	1.276	.047	1.229	.217	1.446	.781		
First 9 months of 1933			521,135	.090	.422	.064	.300	.288	1.164	.021	1.143	.199	1.342	.488		
Last 3 months of 1933			169,716	.098	.415	.055	.287	.286	1.141	.027	1.114	.204	1.318	.956		
1933			690,851	.092	.420	.061	.297	.288	1.158	.022	1.136	.200	1.336	.603		
3-year weighted average			915,557	.139	.349	.075	.288	.347	1.198	.045	1.153	.198	1.351	.650		
TOTAL ROCKY MOUNTAIN																
1931			12,421,279	.237	.221	.051	.340	.215	1.064	.049	1.015	.179	1.194	.878		
1932			10,453,984	.222	.222	.060	.347	.201	1.063	.052	1.011	.174	1.185	.972		
First 9 months of 1933			6,569,548	.235	.235	.062	.334	.170	1.036	.036	1.000	.180	1.180	.770		
Last 3 months of 1933			2,716,840	.221	.223	.048	.339	.170	1.001	.065	.936	.147	1.080	.918		
1933			9,650,082	.227	.231	.058	.334	.167	1.017	.045	.972	.172	1.144	.810		
3-year weighted average			10,841,782	.233	.224	.056	.340	.197	1.050	.049	1.001	.175	1.176	.888		

TOTAL ILLINOIS																
1931	28–45	.2– 4.4	3, 438, 421	.051	.236	.016	.771	.331	1.405	.025	1.380	.100	1.480	.848	.35	2.05
1932	28–45	.1– 4.8	3, 212, 393	.057	.213	.019	.708	.195	1.192	.024	1.168	.093	1.261	1.016	.50	2.47
First 9 months of 1933	28–45	.1– 3.2	2, 088, 245	.057	.262	.014	.591	.179	1.103	.021	1.082	.106	1.188	.745	.62	2.40
Last 3 months of 1933	28–45	.1– 3.2	803, 555	.059	.250	.016	.663	.216	1.204	.024	1.180	.091	1.271	1.203	.63	2.31
1933	28–45	.1– 3.2	2, 921, 527	.057	.257	.014	.613	.189	1.130	.022	1.108	.101	1.209	.873	.62	2.40
3-year weighted average			3, 190, 780	.055	.235	.017	.702	.241	1.250	.023	1.226	.098	1.324	.912		
TOTAL INDIANA																
1931	30–46	.4– 15.0	469, 131	.051	.389	.138	.509	.269	1.356	.038	1.318	.148	1.466	.909	.70	2.02
1932	30–46	.3– 24.0	488, 022	.046	.305	.126	.468	.200	1.145	.034	1.111	.112	1.223	1.057	.37	1.80
First 9 months of 1933	30–46	.5– 22.0	285, 093	.044	.354	.088	.437	.168	1.091	.024	1.067	.119	1.186	.781	.19	1.99
Last 3 months of 1933	30–46	.5– 22.0	132, 298	.044	.259	.156	.473	.147	1.079	.019	1.060	.085	1.145	1.204	.24	2.77
1933	30–46	.5– 22.0	443, 300	.053	.323	.107	.441	.162	1.086	.026	1.060	.112	1.172	.915	.19	2.77
3-year weighted average			466, 818	.050	.339	.124	.473	.212	1.198	.033	1.165	.124	1.289	.963		
OHIO																
1931	36–48	.2– 4.7	2, 313, 207	.132	.336	.337	.657	.352	1.814	.156	1.658	.375	2.033	1.040	.77	6.37
1932	36–48	.1– 11.4	1, 981, 612	.125	.326	.331	.610	.273	1.665	.159	1.506	.390	1.896	1.138	.51	4.28
First 9 months of 1933	36–48	.2– 7.9	1, 308, 941	.122	.329	.316	.659	.255	1.681	.164	1.517	.397	1.914	.939	.68	5.29
Last 3 months of 1933	36–48	.2– 7.9	434, 063	.132	.344	.428	.727	.241	1.872	.204	1.668	.400	2.068	1.486	.25	4.86
1933	36–48	.2– 7.9	1, 756, 776	.128	.330	.341	.675	.252	1.726	.176	1.550	.398	1.948	1.074	.25	5.29
3-year weighted average			2, 017, 198	.129	.331	.336	.647	.297	1.740	.163	1.577	.387	1.964	1.082		
MICHIGAN																
1931	33–44	.7–143.7	1, 854, 823	.017	.217	.142	.101	.454	.931	.006	.925	.084	1.009	.713	.20	5.70
1932	33–44	.6– 58.9	3, 500, 685	.004	.123	.095	.081	.309	.612	.004	.608	.038	.646	.744	.39	5.32
First 9 months of 1933	33–44	.4–160.0	2, 500, 107	.004	.139	.130	.111	.236	.620	.004	.616	.041	.657	.864	.20	4.10
Last 3 months of 1933	33–44	.4–200.0	1, 241, 160	.004	.073	.111	.088	.269	.545	.005	.540	.028	.568	1.003	.16	7.56
1933	33–44	.4–200.0	3, 745, 816	.004	.117	.124	.104	.247	.596	.005	.591	.037	.628	.910	.16	7.56
3-year weighted average			3, 033, 775	.007	.140	.116	.095	.313	.671	.004	.666	.046	.712	.806		
KENTUCKY																
Western																
1931	33–42	.2– 17.2	871, 451	.104	.117	.145	.266	.300	.932	.008	.924	.099	1.023	.708	.13	3.71
1932	33–42	.2– 13.1	965, 724	.093	.180	.155	.337	.263	1.028	.025	1.003	.131	1.134	.904	.21	3.16
First 9 months of 1933	33–42	.1– 5.8	538, 392	.095	.248	.086	.318	.254	1.001	.026	.975	.164	1.139.	.732	.37	2.98
Last 3 months of 1933	33–42	.1– 5.8	148, 215	.114	.282	.159	.461	.282	1.298	.012	1.286	.187	1.473	1.133	.76	4.10
1933	33–42	.1– 5.8	697, 783	.097	.260	.100	.350	.256	1.063	.022	1.041	.168	1.209	.815	.37	4.10
3-year weighted average			844, 986	.098	.180	.137	.316	.274	1.005	.019	.986	.131	1.117	.812		

TABLE 3.—*Crude petroleum: Unit cost of production and sales value by pools and districts, 1931–33*

Cost period	Range of gravity	Range of production per well per day (barrels)	Production—(company interest, barrels)	Expenses						Deduct gas sales and miscellaneous revenue	Net cost	Interest on invested capital	Net cost including interest	Average selling price	Range of costs	
				Depletion	Depreciation	Amortization of intangible development costs	Operating cost	General overhead and administrative	Total cost						Lowest	Highes
KENTUCKY—Continued																
Eastern																
1931	35–41	.1– 3.5	1,559,910	$0.369	$0.231	$0.021	$0.334	$0.253	$1.208	$0.016	$1.192	$0.286	$1.478	$0.852	$0.77	$3.79
1932	36–41	.1– 2.7	1,212,345	.401	.206	.003	.326	.195	1.131	.023	1.108	.315	1.423	.908	.52	4.20
First 9 months of 1933	36–41	.3– 3.1	791,838	.375	.208	.007	.306	.173	1.069	.017	1.052	.321	1.373	.668	.46	1.87
Last 3 months of 1933	36–41	.3– 3.1	253,048	.391	.237	.008	.393	.201	1.230	.038	1.192	.335	1.527	1.227	.50	1.98
1933	36–41	.3– 3.1	1,078,060	.376	.220	.007	.330	.175	1.168	.023	1.085	.321	1.406	.805	.46	1.98
3-year weighted average	------	------	1,283,438	.381	.220	.012	.330	.213	1.156	.020	1.136	.304	1.440	.867	------	------
TOTAL KENTUCKY																
1931	------	------	2,431,361	.274	.190	.065	.310	.270	1.109	.013	1.096	.219	1.315	.800	------	------
1932	------	------	2,178,069	.264	.195	.070	.331	.225	1.085	.023	1.062	.233	1.295	.906	------	------
First 9 months of 1933	------	------	1,330,230	.262	.224	.039	.311	.206	1.042	.020	1.022	.257	1.279	.694	------	------
Last 3 months of 1933	------	------	401,263	.289	.254	.064	.418	.230	1.255	.028	1.227	.280	1.507	1.192	------	------
1933	------	------	1,775,843	.266	.236	.044	.338	.207	1.091	.023	1.068	.260	1.328	.809	------	------
3-year weighted average	------	------	2,128,424	.269	.204	.061	.325	.237	1.096	.019	1.077	.235	1.312	.839	------	------
WEST VIRGINIA																
1931	35–48	.1– 3.7	2,724,241	.091	.422	.123	1.182	.433	2.251	.477	1.774	.394	2.168	1.575	1.26	8.07
1932	35–48	.1– 3.3	2,436,616	.087	.429	.110	1.218	.360	2.204	.467	1.737	.393	2.130	1.572	1.18	4.82
First 9 months of 1933	35–48	.1– 3.0	1,669,525	.063	.376	.105	1.138	.383	2.065	.445	1.620	.386	2.006	1.384	1.08	4.42
Last 3 months of 1933	35–47	.1– 3.9	577,444	.068	.376	.093	1.293	.374	2.204	.433	1.771	.371	2.142	2.113	.64	5.48
1933	35–48	.1– 3.9	2,246,969	.064	.376	.102	1.178	.381	2.101	.442	1.659	.382	2.041	1.571	.64	5.48
3-year weighted average	------	------	2,469,275	.081	.411	.112	1.193	.393	2.190	.463	1.727	.390	2.117	1.573	------	------

PENNSYLVANIA																
1931	32–49	.03– 3.6	7,485,843	.234	.351	.198	.648	.209	1.640	.055	1.585	.522	2.107	2.001	.42	8.94
1932	32–49	.04– 2.9	8,654,518	.251	.332	.211	.562	.188	1.544	.041	1.503	.431	1.934	1.870	.42	9.78
First 9 months of 1933	36–46	.05– 3.6	6,273,726	.256	.332	.215	.530	.189	1.522	.039	1.483	.402	1.885	1.675	.78	101.76
Last 3 months of 1933	32–47	.05– 3.6	2,337,788	.265	.317	.319	.589	.174	1.664	.037	1.627	.363	1.990	2.426	.51	13.59
1933	32–47	.05– 5.0	8,813,987	.259	.327	.241	.546	.181	1.554	.039	1.515	.393	1.908	1.878	.51	101.76
3-year weighted average			8,318,116	.249	.336	.217	.582	.192	1.576	.044	1.532	.445	1.977	1.912		
NEW YORK																
1931	42–45	.3– 1.5	847,253	.341	.341	.076	.511	.253	1.522	.008	1.514	.535	2.049	2.140	.65	5.25
1932	42–45	.2– 1.9	1,005,850	.323	.337	.121	.485	.184	1.450	.009	1.441	.490	1.931	1.896	.78	4.15
First 9 months of 1933	42–45	.2– 1.6	540,081	.318	.325	.098	.450	.194	1.385	.008	1.377	.549	1.926	1.679	.49	6.29
Last 3 months of 1933	42–45	.2– 1.6	170,788	.315	.287	.237	.562	.246	1.647	.017	1.630	.524	2.154	2.393	.42	5.59
1933	42–45	.2– 1.6	792,417	.327	.321	.127	.479	.196	1.450	.009	1.441	.541	1.982	1.834	.42	6.29
3-year weighted average			881,840	.330	.333	.108	.491	.211	1.473	.009	1.464	.520	1.984	1.955		
TOTAL EASTERN AREA																
1931			21,564,280	.162	.311	.148	.643	.303	1.567	.103	1.464	.343	1.807	1.396		
1932			23,457,765	.160	.281	.148	.556	.236	1.381	.085	1.296	.296	1.592	1.387		
First 9 months of 1933			15,995,948	.158	.288	.152	.524	.222	1.344	.081	1.263	.293	1.556	1.239		
Last 3 months of 1933			6,098,359	.155	.260	.201	.558	.228	1.402	.077	1.325	.255	1.580	1.770		
1933			22,496,635	.159	.280	.164	.534	.221	1.358	.079	1.279	.284	1.563	1.388		
3-year weighted average			22,506,227	.160	.291	.154	.576	.252	1.433	.089	1.344	.307	1.651	1.390		
TOTAL ALL STATES																
1931			558,296,833	.084	.160	.037	.220	.347	.848	.063	.785	.109	.894	.643		
1932			517,586,938	.081	.152	.043	.213	.264	.753	.059	.694	.114	.808	.858		
First 9 months of 1933			421,592,211	.073	.132	.054	.175	.211	.645	.051	.594	.105	.699	.578		
Last 3 months of 1933			134,151,408	.076	.139	.056	.221	.241	.733	.074	.659	.113	.772	.992		
1933			566,448,664	.073	.134	.054	.187	.217	.665	.056	.609	.108	.717	.678		
3-year weighted average			547,444,145	.079	.148	.045	.207	.276	.755	.059	.696	.110	.806	.723		

III. PHYSICAL LAWS CAUSING MIGRATION AND DRAINAGE IN AN OIL FIELD

1. Federal Oil Conservation Board, *Report III,* 1929:

[Page 21 et seq.]

VALUE OF ORIGINAL GAS

Gas in an oil sand should be looked on primarily as a source of energy rather than as a substance. This stored energy is the prime motive force for the extraction of the oil from the reservoir. It drives the oil through the minute pore spaces of the reservoir rock to the well and lifts or helps to lift it to the surface.

Gas has a second and almost equally important value—its value in increasing the fluidity of the oil. As already noted, part of the gas in an oil sand may be in liquid form; part may be dissolved in the oil. The amount that may be dissolved depends upon the character of the oil and the character of the gas and is proportional to the temperature and the pressure.

The greater the amount of dissolved and liquid gas in an oil, the lighter the oil, the less viscous, and the lower its surface tension. Specific gravity viscosity and surface tension of the oil are all lessened by the solution of the gas, and as these are lessened the mobility of the oil is increased. Rendered more fluid by the gas, the oil can pass through the intricate, tortuous interstices of the reservoir and find its way to the area of lower pressure at the well. Greater fluidity, greater mobility, greater ease of movement—these represent the solution value of gas in oil.

It will be noted how these two values supplement one another. The gas makes the oil easier to move; the energy in the gas moves it. These two properties of gas are of prime importance in the production of oil.

When a well penetrates a petroleum reservoir theretofore untouched gas pressure is released about the well, and oil and gas begin to flow through the reservoir spaces toward the point of lowered pressure. As the fluid moves toward the well there is a progressive drop in pressure. With the drop in pressure the free gas expands and drives the oil through the sand; the dissolved gas comes out of solution and becomes free gas; the liquified gas vaporizes and becomes free gas; and the additional free gas also helps to drive the oil to the well. The progressive liberation of energy increases the velocity of the fluids and overcomes friction as they move through the rock voids toward the point of egress.

It is logical to assume that those winding pore channels which have the greater and more uniform cross section will carry a more mobile fluid, a fluid with a greater proportion of gas, than the other channels, and that this gas portion is augmented by distillation from neighboring channels. The natural gas in endeavoring to escape from the reservoir in such a way as to reduce the stored energy attempts to clear those larger and more uniform pore channels of petroleum, which, when cleared, will permit the free egress of the remaining gas to and out of the well, leaving a maximum of petroleum in the reservoir. If the pressure is too rapidly reduced by permitting too rapid escape of gas from the well the proportion of oil left in the reservoir is increased.

As the pressure is lowered and the dissolved and liquid gas leave the oil, the oil becomes more viscous and increasingly difficult to move, and this augments the tendency to leave more oil in the reservoir if the pressure is too rapidly exhausted.

As the production declines the proportion of gas produced with the oil—the gas-oil ratio—increases, and the gas energy declines below the point necessary to flow the well. Thus the flush or flowing period of the field passes.

As the field declines pressures are lower than during the flush period and is not so plentiful or so mobile. Gradually oil accumulates in the bottom of the well and the surrounding sand and obstructs the passage of the gas. Pressure is built up behind the oil and when this pressure is great enough the well again flows, the sand near the well is again depleted, and the cycle is repeated. This is the period of intermittent flow.

Finally the amount of oil reaching the well and the amount of gas and gas pressure behind it are not great enough to cause even intermittent flow. Gravity begins to play a more important part in the movement of the oil, especially if the reservoir body be thick. The oil is less mobile, all the gas energy is utilized in bringing the oil to the well, and artificial means must be employed for lifting it. The well has reached the pumping stage.

It is readily seen that throughout the well history the gas present in the oil has facilitated movement toward the well, and that, except for the part that may have been played by other forces such as water and gravity, movement has depended entirely on the gas energy.

In many fields the gas pressure has played a third important role in holding back edge or bottom water or both and preventing its encroachment into the productive parts of the sand. When the gas pressure declines below the hydrostatic head of the water, friction alone delays the water in flooding the field.

2. Ely, *Oil Conservation through Interstate Agreement* (Federal Oil Conservation Board):

[Page 3, et seq.]

THE DOCTRINE OF CAPTURE

An oil pool is a reservoir of oil, gas, and gas in solution. It becomes also a gas and hydraulic engine when the first well disturbs the equilibrium of hydraulic, gas, and rock pressures which was necessary for the retention of the pool in that particular place. Wells drilled into various parts of the field will produce gas or oil or both; or water, or oil and water; or will strike dry strata, all depending on their location. The maximum ultimate recovery of oil can be effected only by control of spacing, drilling, and producing of wells so as to utilize these reservoir forces for the production of oil, rather than permitting the dissipation of gas or the "channeling" of water through the oil sands to the wells. All this is now elementary, but the decisions which shaped our law ignored it.

The single oil pool is the natural unit of property, but not the common-law unit. Instead, on early and fanciful analogies to wild game, supplemented later by equally erroneous analogies to solid minerals, and by an unfortunate early example of harsh logic from the English law of percolating waters, our courts have universally recognized that whatever one landowner could withdraw (by natural means at least) from the common pool he could take and keep, regardless of the effect on his neighbors; and that their only defense was to "do likewise"; that is, drill and produce. * * *

This unfortunate rule originated in Pennsylvania at a time when that State was a recent convert to the harsh English rule of percolating waters, which protects no well owner against the withdrawals of another. It is now entrenched in the law of oil and gas even in those States which have established the American doctrine of correlative rights and reasonable use as to percolating waters, with the possible but not very probable exception of California. In its broadest phase, the rule of capture recognized no right to protection against even the malicious waste of gas; the law of oil and gas took root when even engineers knew but little of the forces with which they were dealing, and the lawyers less. * * * The rule, however, must be dealt with as it exists, as even the most advanced conservation cases recognize. In *Champlin Ref. Co.* v. *Corpn. Comm.,* cited below, the United States Supreme Court said: "Where proportional taking from the wells in flush pools is not enforced, operators who do not have physical or market outlets are forced to produce to capacity in order to prevent draining to others having adequate outlets."

In practical application the capture rule, recognizing no right in a landowner to retain his oil and gas in place against his neighbor, and hence no protection against drainage except by offset drilling, forces oil into the market in response to the number of offset wells rather than the market demand. The remedy of these neighbors is not injuction, nor accounting, nor receivership of the offending wells; it is offset drilling, whether the oil thereby produced can be sold at profitable prices or at all. And the remedy of the neighbors of these neighbors is to drill also; so that everyone in the field, to use Henry L. Doherty's expression, must compete in the run on the bank. Since the operator having the readiest outlet presumably drills the most wells and produces the most oil, his neighbors, required to offset, must collectively produce at a rate which is automatically higher than the average demand of all outlets, or else they must lose their oil. They cannot hold for better times; therein their business differs from that of the producer of coal, copper, or iron. The doctrine of capture is thus the first artificial factor which sets the oil industry apart and calls for legislative correction. To quote the Federal Oil Conservation Board:

"Both the immediate potential supply of crude oil and the quantity recoverable over a period of years are dependent upon a factor which no State has found means to effectively control, and which stimulates production without direct relationship to the demand for oil—the system of offset drilling necessitated by the prevalent doctrines of ownership. An oil pool, being a physical unit, is subject to drainage by any surface owner regardless of the oil content of his acreage. In the absence of statute or agreement, the only recourse of a co-owner is to compete for capture by offset drilling. The State's authority to control this basic factor, drilling, is largely untested, except for some successful efforts to control spacing of wells."

THE RELATIONSHIP OF LESSOR AND LESSEE

The second artificial factor arises not from the relationship between adjoining landowners but from the separation of interests between landowners and lessees of the same tract. Landowners, without resources to drill wells, generally lease to operators the privilege to do so. Leases vary greatly in form, from conveyances of a separate mineral estate to licenses to explore. In practically all of them, however, the lessor's return is his royalty on production, and the lessee is under certain obligations which constitute collectively the second artificial factor under consideration—the lessee's express and implied covenants. As this factor is one theoretically capable of control by agreement, and is more of a consequence of the doctrine of capture than it is an independent factor, no attention will be paid to it here except to point out some of the consequences.

Consideration may be omitted here of those covenants attaching before production is struck. Once a discovery is made, certain implied covenants become enforceable on behalf of the lessor, all of them impelling production and limiting the lessee's power to leave oil in the ground even if he wished to do so. The principal covenants exerting particular pressure toward market are the following:

First, there is an implied covenant to produce for market.

Second, there is an implied covenant to continue to drill and develop the leased land after discovery.

Third, there is an implied covenant to drill and produce offset wells to protect the premises from drainage.

The consequences of breach of these conditions vary in different jurisdictions, but in general the penalty is damages or forfeiture unless, in particular circumstances, the courts permit the lessee to show that more wells would not pay for themselves. These implied covenants spring, in part, from the doctrine of capture—a landowner can prevent the drainage of his land only by draining it himself, and his lessee must either do it for him, or get off, or pay damages.

In outlining here these present and existing factors which lead to the dissipation of a pool entirely without relation to market demand, it is useless to dwell on the fact that the inception of the doctrine of capture was an avoidable accident.

IV. OVERPRODUCTION IN EAST TEXAS

1. Federal Oil Conservation Board, *Report V*, 1932:

[Page 42 et seq.]

THE EAST TEXAS FIELD

The early stages of development in the east Texas field offered an outstanding example of wasteful competitive development and premature withdrawal of underground reserves. A true picture of the significance and real effect of current development practices in east Texas upon the economic structure will have better proportion when viewed through the perspective of years. However, a review of available facts will help formulation of definite opinions regarding the effect of this development and withdrawal on oil and gas conservation.

The east Texas area began to draw the interest of the petroleum industry, and shortly thereafter the attention of the public generally, upon the successful completion on October 3, 1930, of the Joiner "discovery" well, in Rusk County, Tex., at a reported depth of 3,592 feet. Within a year from the discovery of oil at this relatively shallow depth, in what geologists have now agreed is the Woodbine formation, the proved limits of the field had been extended to an area some 35 miles long and 3 to 7½ miles wide with more than 2,200 completed wells and 780 active drilling operations under way. During one week at the end of the first year of development nearly 200 new locations for derricks were made.

For a time, lack of control in all its phases—engineering, economic, political, and personal—seemed to predominate in the east Texas area, but it should not be inferred that there were no honest attempts to conserve this vast reservoir of oil, and those efforts have not been useless.

Contemplation of the east Texas area leads to the use of superlatives. In introducing a discussion covering the east Texas oil field, sponsored by the East Texas Geological Society and the Dallas, Tex., petroleum geologists, the statement was made:

Today (December 1931) east Texas stands as the greatest field in all oil-producing history; greatest in area; greatest in daily potential; greatest in future reserves; greatest in threat to the oil-producing business; and, if production is not restricted, it will be the greatest in waste of natural resources.

The areal proportions of the east Texas field and its size compared with other major oil fields in the United States are evident in the accompanying map, figure 3, reproduced in this report through the courtesy of Hudnall & Pirtle, consulting geologists.

The whole gamut of controversial questions has been run in attempting to determine equitable and rational production of oil. Although many groups, organizations, and official and semiofficial bodies have been called together in an effort to solve the economic and technical problems of east Texas, in essence the main differences of opinion seem to have been between the proponents of some form of proration or "allowable withdrawal" of oil from the field and the advocates of competitive drilling and unrestricted production programs, sometimes referred to as the "antiprorationists." Many plans have been proposed to permit "allowable withdrawal", or to develop the field as a unit, or several units. Public opinion in the east Texas area, however, has not reached a point where all interested parties are receptive to the suggestion that oil and gas operations be conducted under a unit plan. As an outgrowth of conditions in certain areas of the field during the summer of 1931, the Governor of Texas called out the State militia on August 17, and the field was shut down. Injunctions followed and the settlement of these matters is still pending in the higher courts. When the field was reopened on

September 5, an allowable production of 225 barrels per well per day was established by the Railroad Commission. This allowable production has been reduced gradually and as of May 16, 1932, each well was allowed to produce 59 barrels per day, an allowable production for the field of about 325,000 barrels daily.

Accurate estimates of reserves in fields under prorated production are difficult to obtain because of factors which did not appear when fields were produced to commercial depletion through natural decline, and no one method now in existence seems adequate for general application. Nevertheless, methods are being evolved which permit making fairly accurate approximations of ultimate recovery. According to the averaged figures of some 60 geologists and engineers, who have studied the east Texas oil field intensively and who discussed recoveries from that field at an open meeting in Tyler, Tex., December 17, 1931:

> The east Texas field at present comprises an area of 98,250 proven acres, of which approximately 50,000 acres are considered the "heart of the field." In this 50,000 acres, the average maximum thickness of saturated sand actually recovered in cores is 40 feet, the average maximum drilled is 70 feet, porosity ranged from 20 to 31 percent, the estimated average recovery is 40 percent, and an estimated average ultimate yield of 30,322 barrels per acre is arrived at.
>
> The remaining or edge 50,000 acres is estimated to have an average pay sand thickness of 18.4 feet and an estimated average ultimate yield of 12,000 barrels per acre. The total ultimate production of the field is estimated at 2,100,000,000 barrels.

Statistics compiled by the United States Bureau of Mines show the cumulative production from the east Texas field to April 1, 1932, to be 137,444,000 barrels. In February 1932 there were 706 operators, 1,980 producing leases, and 4,352 producing wells. On May 15, 1932, the number of producing wells was approximately 5,520.

Assuming a potential reserve of approximately 2 billion barrels, the cumulative production to April 1, 1932 (137,444,000 barrels), represents a depletion of 6.87 percent.

The original bottom-hole pressures were above 1,600 pounds per square inch, as estimated from readings of recording instruments which were not run in the wells. Bottom-hole pressure gages now in use show that in parts of the field the reservoir pressure has declined below 800 or 900 pounds per square inch, and some wells have stopped flowing.

The rapid decline in reservoir pressures demonstrates the detrimental effect of competitive development and rapid withdrawal. Oil in the east Texas field has been referred to as "undersaturated"; that is, more gas, if it had been present in the formations, could have been dissolved in the oil under existing reservoir conditions. Because of this undersaturation the gas-oil ratios in the field are relatively low (300 to 450 cubic feet per barrel) and at present are fairly uniform throughout the field.

In this connection, penetration of the sand body is a factor that will influence the later productive life of the field. Today, wells of shallow penetration are "stripping off" the lighter and less viscous fractions, leaving the heavier and more viscous fractions to be recovered subsequently. Although gas pressures are being lowered, making more difficult the recovery of the heavier fractions and probably lessening the ultimate recovery, nevertheless the menace of water encroachment in parts of the field makes inexpedient the deep or complete penetration of the sand body. Therefore, a balance must be struck between the conservation of gas and the hazard of water encroachment.

To obtain the maximum lifting efficiency of the gas that is dissolved in the oil a considerable amount of experimental work has been applied to the "choking" or restricting the flow of oil and gas at the bottoms of wells. Placing a restriction or "choke" at the bottom of the flow column creates a high differential pressure between the entrance and discharge sides of the aperture, thereby permitting gas to come out of solution. The expansive energy of this gas forces the oil to the surface. Although more study is needed with reference to bottom-hole "choking", it is believed that the principle has sound application to underground conditions in the east Texas area, and that the method promotes the maintenance of relatively high reservoir pressures and the prevention of irregular encroachment of water, as well as the saving and efficient use of expanding gas.

The water situation in the east Texas field is still problematical. At one time it was predicted that water would "flood the field" in a short time, and salt-water disposal methods were contemplated. Undoubtedly proration has retarded the encroachment, and ideas regarding a rapid water drive have been modified. Most of the engineers and geologists in the east Texas field agree "that a sufficient hydrostatic head exists and that orderly and restricted production will be necessary to reduce the water problem to a minimum."

A report by the Railroad Commission of Texas for April 30, 1932, showed 96 wells making water in varying amounts. In general, these wells are located along and near the west edge of the field.

The foregoing review of conditions in the east Texas field shows the need for rational control to maintain the social and economic structure of the industry and to conserve the underground supply. Water encroachment has been retarded since methods of orderly production have been employed, and in consequence the ultimate recovery from the field has been increased over what it would have been if uncontrolled production had continued. However, the amount of this increase is not determinable. The ultimate effect of the east Texas field upon the economic structure depends upon how wisely the industry and the public permit rational methods of withdrawal to be applied during its remaining productive life.

2. Oil and Gas Journal, July 27, 1933, p. 35.—McIntyre, *Flush Fields and Illegal Oil Runs Responsible for Increased Production:*

* * * The increase in east Texas alone was 3,830,217 barrels in excess of the total increase in the United States over the first half of last year. The combined increase of production in east Texas, Oklahoma City, and Conroe, Tex., was 59,808,692 barrels, as against a total for the whole country of 39,022,180 barrels, indicating a falling off in other fields of 20,786,512 barrels.

Millions of barrels of oil produced in disregard of legal production allowables made by the Texas Railroad Commission and the Oklahoma Corporation Commission comprised much of the unexpectedly large production yielded by Texas and Oklahoma in the 6-month period. Regardless of price some producers got rid of all the oil they could find a market for, most of the crude going out in tank cars. Much of this oil was bought by brokers who gambled on selling it at a profit to refiners at various points of destination.

At the beginning of the year it was expected that production this year would be less than in 1932, and until the third week in February it appeared that the expectations would be realized. Then east Texas began to assert itself, and from a production of 10,459,555 barrels in January it changed to 17,355,872 barrels in March. It fell off to 10,916,250 barrels in April while potentials were being taken, but in May it hit its all-time peak for a month by pouring out 31,322,545 barrels, an average of more than 1,000,000 barrels per day, an unprecedented figure. A partial shut-down in June brought production down to 22,908,640 barrels.

The Texas Gulf coast also manifested a desire to run away with production, starting off in January with a record of 3,906,389 barrels or 126,013 barrels per day, and increasing steadily to an average of 182,231 barrels per day in May, the highest figure it ever reached. It ended the half year with an average of 176,038 barrels per day in June. The Conroe field was largely responsible for the increase, with some help from the Thompson field, formerly carried in these reports as the Rabbs Ridge Field.

In Oklahoma, the Oklahoma City field which produced 27,039,796 barrels in the first 6 months, exceeded its production in the same period last year by 8,852,528 barrels.

Crude-oil production in California during the half year was the lowest for any similar period since 1922, when production aggregated 61,092,778 barrels in the first half of that year. This half year's output was 84,407,535 barrels. Unfavorable marketing conditions in a part of the period were responsible for a lack of new wells and a decline in production. Kettleman Hills, the most interesting field in California at this time, produced about the same quantity of oil this year it did in the like period in 1932.

The accompanying table shows a total of 320,571 oil wells producing on June 30. Of these, 175,480 wells in New York, Pennsylvania, Ohio, West Virginia, Indiana, Illinois, and Kentucky produced an average of less than one-half barrel per day, and if we add to these eastern wells all the wells in Kansas and north central Texas, including flush, semiflush, and strippers, the combined 217,447 wells averaged only 1.2 barrels per day. Then add the 58,742 wells in Oklahoma and the combined daily average production of the 276,189 wells, including Oklahoma City's gushers, the good wells in the Greater Seminole district and other flush and semiflush wells, only reaches the 2½-barrel per day mark. If the flush and semiflush wells are taken out of the list, it would be easy to show 250,000 wells in the United States, the combined production of which did not average over 1 barrel per well per day.

Five producing divisions increased their production over the same period last year: Kansas, Oklahoma, east central Texas, east Texas, and the Gulf coast. The aggregate increase was 57,231,092 barrels. Against this all the others showed a decline, but of only 18,208,912 barrels, the greatest loss having been in California where production slumped 6,536,538 barrels. West Texas production declined 3,579,139 barrels. The detailed figures of gains and losses follow:

Increase in production

	Barrels
Kansas	1, 355, 032
Oklahoma	3, 043, 867
East central Texas	356, 339
East Texas	42, 852, 397
Gulf Coast (Tex., La.)	9, 623, 457
Total increase	57, 231, 092

Decrease in production

New York	348, 000
Pennsylvania	493, 000
Ohio	290, 000
West Virginia	264, 000
Kentucky	778, 000
Michigan	220, 000
Tennessee	1, 000
Indiana	137, 000
Illinois	846, 000
North central Texas	553, 096
West Texas	3, 579, 139
Texas Panhandle	927, 463
Southwest Texas	879, 303
Arkansas	752, 343
North Louisiana	33, 216
Wyoming	1, 064, 974
Montana	121, 464
Colorado	160, 291
New Mexico	224, 085
California	6, 536, 538
Total decrease	18, 208, 912

Summary of crude-oil production, in barrels, in United States, first 6 months of 1933

	1930, production first 6 months	1931, production first 6 months	1932, production first 6 months	1933, production first 6 months	Number of oil wells producing, June 30	Average daily production per well, 6 months
New York	2, 172, 000	1, 637, 000	1, 832, 000	1, 484, 000	14, 200	0. 58
Pennsylvania	7, 344, 000	5, 465, 000	6, 427, 000	5, 934, 000	78, 500	. 42
Ohio	3, 390, 000	2, 811, 000	2, 357, 000	2, 067, 000	36, 600	. 31
West Virginia	2, 792, 000	2, 210, 000	1, 996, 000	1, 732, 000	14, 300	. 67
Kentucky	3, 878, 000	3, 176, 000	2, 994, 000	2, 216, 000	14, 900	. 82
Michigan	2, 146, 000	1, 511, 000	2, 950, 000	2, 730, 000	680	49. 55
Tennessee	7, 000	4, 000	2, 000	1, 000	----------	----------
Indiana	519, 000	409, 000	437, 000	300, 000	2, 380	. 70
Illinois	3, 010, 000	2, 283, 000	2, 610, 000	1, 764, 000	14, 600	. 67
Kansas	21, 220, 994	20, 070, 775	17, 902, 544	19, 257, 576	18, 875	5. 64
Oklahoma	117, 779, 527	95, 838, 677	77, 113, 805	80, 157, 672	58, 742	7. 54
North central Texas	24, 842, 224	15, 029, 694	13, 544, 129	12, 991, 033	23, 092	3. 11
West Texas	58, 824, 487	40, 690, 647	32, 807, 924	29, 228, 785	3, 048	52. 98
Texas Panhandle	17, 163, 665	10, 092, 312	9, 124, 081	8, 196, 618	1, 994	22. 71
East central Texas	5, 616, 731	8, 877, 881	9, 982, 024	10, 338, 363	923	61. 88
East Texas	----------	31, 532, 184	60, 752, 039	103, 604, 436	10, 183	56. 21
Gulf Coast	35, 982, 479	31, 422, 135	24, 551, 304	34, 174, 761	3, 120	60. 52
Southwest Texas	12, 275, 729	13, 563, 721	11, 094, 330	10, 215, 027	4, 368	12. 92
Arkansas	10, 332, 347	8, 649, 636	6, 309, 267	5, 556, 924	2, 905	10. 57
North Louisiana	7, 259, 246	7, 227, 389	5, 269, 165	5, 235, 949	2, 423	11. 93
Wyoming	8, 927, 810	7, 814, 930	6, 602, 252	5, 537, 278	3, 702	8. 26
Montana	1, 646, 357	1, 501, 846	1, 196, 703	1, 075, 239	1, 452	4. 09
Colorado	850, 036	758, 242	614, 793	454, 502	191	13. 15
New Mexico	2, 511, 118	7, 522, 672	6, 610, 435	6, 386, 350	439	80. 37
Utah	----------	----------	----------	----------	----------	----------
California	118, 402, 863	95, 675, 449	90, 944, 073	84, 407, 535	8, 954	52. 08
Total	468, 893, 613	415, 774, 190	396, 023, 868	435, 046, 048	320, 571	7. 50

Production of producing divisions, by months

	January	February	March	April	May	June	Total, 6 months
	Barrels	*Barrels*	*Barrels*	*Barrels*	*Barrels*	*Barrels*	*Barrels*
California	14, 460, 282	13, 107, 043	13, 414, 980	14, 262, 943	14, 817, 633	14, 344, 654	84, 407, 535
Texas	26, 115, 932	25, 092, 383	34, 242, 444	27, 306, 582	49, 151, 776	39, 907, 737	201, 816, 854
Oklahoma	12, 550, 784	12, 570, 992	15, 455, 236	11, 720, 010	13, 521, 580	14, 339, 070	80, 157, 672
Kansas	2, 871, 282	2, 801, 512	3, 604, 539	3, 492, 990	3, 277, 103	3, 210, 150	19, 257, 576
Arkansas	993, 457	880, 208	943, 702	909, 120	928, 667	901, 770	5, 556, 924
Louisiana	2, 021, 117	1, 793, 443	2, 070, 695	2, 156, 736	2, 116, 296	2, 009, 831	12, 168, 118
Rocky Mountain	2, 241, 610	2, 096, 612	2, 371, 469	2, 209, 470	2, 294, 558	2, 239, 650	13, 453, 369
Eastern	3, 112, 000	2, 747, 000	3, 118, 000	3, 017, 000	3, 177, 000	3, 057, 000	18, 228, 000
Total, United States	64, 366, 464	61, 089, 193	75, 221, 065	65, 074, 851	89, 284, 613	80, 009, 862	435, 046, 048

[The figures in the table opposite this page are based in part upon the tables on pages 110 to 123 inclusive.]

a. Department of Commerce, Bureau of Mines, Mineral Resources of the United States, 1931, Part II (Crude Petroleum and Petroleum Products):

[Pages 565–566]

Production of crude petroleum by districts and States and daily average production in principal fields and States in 1931, by months

[Thousands of barrels of 42 U. S. gallons]

	January	February	March	April	May	June	July	August	September	October	November	December	Total	Value at wells[1]
Appalachian:														
New York	251	241	264	269	268	286	275	257	299	324	291	338	3, 363	6, 800
Pennsylvania	936	850	924	935	942	937	935	941	1, 087	1, 204	1, 072	1, 129	11, 892	23, 550
West Virginia	379	346	376	376	373	380	365	347	381	415	352	382	4, 472	7, 070
East and southeast Ohio	391	356	389	375	368	364	313	290	345	355	322	344	4, 212	4, 600
Kentucky	551	525	688	515	477	486	478	461	555	591	615	514	6, 456	5, 295
Tennessee	--------	2	--------	1	1	--------	1	--------	--------	--------	1	--------	6	5
Total, Appalachian	2, 508	2, 320	2, 641	2, 471	2, 429	2, 453	2, 367	2, 296	2, 667	2, 889	2, 653	2, 707	30, 401	47, 320
Lima-Indiana:														
Northwestern Ohio	105	91	93	93	93	100	98	82	95	98	78	89	1, 115	1, 010
Northeastern Indiana	4	4	3	3	4	3	2	3	3	3	3	2	37	20
Michigan	267	231	291	263	260	240	287	281	357	405	430	477	3, 789	2, 840
Total, Lima-Indiana	376	326	387	359	357	343	387	366	455	506	511	568	4, 941	3, 870
Illinois-Indiana:														
Southwest Indiana	70	66	58	66	66	75	72	64	67	67	64	68	803	730
Illinois	411	376	374	378	384	456	463	439	437	444	430	447	5, 039	4, 500
Total, Illinois-Indiana	481	442	432	444	450	531	535	503	504	511	494	515	5, 842	5, 230

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[1] Thousands of dollars.

V. THE EFFECT OF OV

1. Average dai

1931 production figures taken from Department of Commerce, Bureau of Mines, Mineral Resources of the Uni
of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix (Crude petroleum and petroleum products), p
These tables are all reprinted in Appendix B, pp. 110–112, 116–118, 121–123. Where daily average production is not d

Posted prices for 1931 taken from Department of Commerce, Bureau of Mines, Mineral Resources of the Unite
Mines, Minerals Yearbook, 1932–1933, Statistical Appendix (Crude petroleum and petroleum products), p. 334.
Petroleum News). Bureau of Mines' figures for 1933 have not as yet been published. Prices are given in dollars

	East Texas			Oklahoma City			Mid-Continent except east Texas and Oklahoma City		
	Daily average production	Posted price		Daily average production	Posted price		Daily average production	Posted price	
		Date	Amount [1]		Date	Amount [2]		Date	Amount [3]
1931									
January	3			82			1,161	Jan. 1	$1.01
February	26			98			1,157		
March	98	Mar. 7	$0.63	140			1,138	Mar. 10	.63
April	259			172			1,127		
May	315	May 26	.33	177			1,124		
June	363	June 20	.20	193			1,100	June 1	.35
July	528			154			1,016	July 11 July 23	.20 .40
August	446	Aug. 13 Aug. 22	.25 .68	24			922	Aug. 22	.66
September	360			22			946		
October	417			116			1,003		
November	407	Nov. 2	.83	178			1,044	Nov. 2	.81
December	362			167			1,019		
1932									
January	322			121			919		
February	312			99			945		
March	343			112			924		
April	358	Apr. 1	.98	103			970	Apr. 1	.92
May	345			110			947		
June	353			95			940		
July	345			95			928		
August	334			75			935		
September	373			75			920		
October	367	Oct. 14	1.10	68			896	Oct. 15	1.04
November	359			83			890		
December	173	Dec. 16	.75	73			860	Dec. 15 Dec. 20	.88 .69
1933									
January	351	Jan. 20	.50	109			875	Jan. 18	.44
February	387			149			887		
March	560			200			914		
April	369	Apr. 25	.10	103			912		
May	969	May 2 [9] May 13	 .25	134			859	May 6	.25
June	841	June 19	.50	202			929	June 17	.44
July	646			278			949	July 8	.54
August	608	Aug. 24	.60	268			960	Aug. 25	.64
September	560	Sept. 6 Sept. 8 Sept. 29	.75 .90 1.00	223			929	Sept. 6 Sept. 8 Sept. 29	.74 .89 1.00
October	525			195			860		
November	453			192			856		
December	451			188			847		

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[1] 38°–38.9° gravity oil. 1933 prices from Oil Price Handbook, 1933, p. 152. Posted by Humble Oil and Refinin
[2] Same as Mid-Continent.
[3] 38°–38.9° gravity oil in 1931; 36°–36.9° gravity oil in 1932 and 1933 (the change was necessitated by the change in t
[4] 1933 prices from Oil Price Handbook, 1933, p. 145. Posted by South West Pennsylvania Pipe Line.
[5] 1933 prices from Oil Price Handbook, 1933, p. 146. Posted by Ohio Oil Company for the Lima, Ohio, field.
[6] 36°–36.9° gravity oil. 1933 prices from Oil Price Handbook, 1933, p. 164. Posted by Stanolind Oil and Gas C
[7] Grade B (below 25°) gravity oil, 1931 to December 1932; 24°–24.9° gravity oil for December 1932 and 1933 (the
Company.
[8] 30°–30.9° gravity oil in 1931; 27°–27.9° gravity oil in 1932 and 1933 (the change was necessitated by the change i
[9] Postings discontinued.

Prepared by the U. S. Bureau of Mines, Petroleum Economics Division.

V. THE EFFECT OF OVERPRODUCTION IN EAST TEXAS UPON PRICES

1. *Average daily production and posted prices, 1931–1933*

1931 production figures taken from Department of Commerce, Bureau of Mines, Mineral Resources of the United States, 1931. Part II (Crude petroleum and petroleum products), pp. 565, 566. 1932 pro of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix (Crude petroleum and petroleum products), pp. 308–309. 1933 production figures taken from Department of the Interior, Bureau of M These tables are all reprinted in Appendix B, pp. 110–112, 116–118, 121–123. Where daily average production is not directly given, it is computed by dividing the monthly production by the number of days in

Posted prices for 1931 taken from Department of Commerce, Bureau of Mines, Mineral Resources of the United States, 1931, Part II (Crude petroleum and petroleum products), pp. 608–610. Posted p Mines, Minerals Yearbook, 1932–1933, Statistical Appendix (Crude petroleum and petroleum products), p. 334. These tables are reprinted in Appendix B, pp. 113–115, 119–120. Posted prices for 1933 tak Petroleum News). Bureau of Mines' figures for 1933 have not as yet been published. Prices are given in dollars per barrel.

[Production in thousands of barrels]

	East Texas			Oklahoma City			Mid-Continent except east Texas and Oklahoma City			Appalachian			Lima-Indiana-Illinois			Rocky Mountain			
	Daily average production	Posted price Date	Posted price Amount[1]	Daily average production	Posted price Date	Posted price Amount[2]	Daily average production	Posted price Date	Posted price Amount[3]	Daily average production	Posted price Date	Posted price Amount[4]	Daily average production	Posted price Date	Posted price Amount[5]	Daily average production	Posted price Date	Posted price Amount[6]	Daily avera produ tion
1931																			
January	3			82			1,161	Jan. 1	$1.01	81	Jan. 1	$1.80	28	Jan. 1	$1.10	57	Jan. 1	$0.95	17
February	26			98			1,157			83			27			59			17
March	98	Mar. 7	$0.63	140			1,138	Mar. 10	.63	85			26	Mar. 6	.90	56	Mar. 5	.59	16
April	259			172			1,127			82	Apr. 23	1.70	27			58			17
May	315	May 26	.33	177			1,124			78	Apr. 27	1.60	26			56			17
June	363	June 20	.20	193			1,100	June 1	.35	82	June 3	1.35	29	June 2	.70	57	June 1	.33	15
July	528			154			1,016	July 11 July 23	.20 .40	76	July 11 July 29	1.20 1.40	30	July 11 July 24	.55 .70	53	July 9 July 24	.18 .38	14
August	446	Aug. 13 Aug. 22	.25 .68	24			922	Aug. 22	.66	74	Aug. 3 Aug. 17 Aug. 29	1.55 1.60 1.65	28	Aug. 18 Aug. 24	.85 .90	53	Aug. 22	.62	14
September	360			22			946			89	Sept. 12	1.80	32			51			14
October	417			116			1,003			93			33			49			14
November	407	Nov. 2	.83	178			1,044	Nov. 2	.81	88	Nov. 1	1.70	34	Nov. 3	1.00	50	Nov. 2	.77	14
December	362			167			1,019			87	Dec. 16	1.55	35			50			14
1932																			
January	322			121			919			81			34			48			1
February	312			99			945			79			34			49			1
March	343			112			924			80			37			50			1
April	358	Apr. 1	.98	103			970	Apr. 1	.92	85	Apr. 25	1.75	37	Apr. 11	1.15	54	Apr. 11	.92	1
May	345			110			947			86			39			49			14
June	353			95			940			88			38			47			14
July	345			95			928			80			38			49			14
August	334			75			935			83	Aug 11	1.72	39			50			1
September	373			75			920			83	Sept. 13	1.57	42			46			1
October	367	Oct. 14	1.10	68			896	Oct. 15	1.04	76	Oct. 3	1.42	38			44	Oct. 15	1.04	1
November	359			83			890			76			34			44			1
December	173	Dec. 16	.75	73			860	Dec. 15 Dec. 20	.88 .69	73			31	Dec. 16	1.00	40	Dec. 15 Dec. 20	.88 .69	1
1933																			
January	351	Jan. 20	.50	109			875	Jan. 18	.44	72	Jan. 19 Jan. 21	1.27 1.17	32	Jan. 10 Jan. 18	.90 .70	41	Jan. 18	.44	1
February	387			149			887			71			28			40			1
March	560			200			914			71			29			41			1
April	369	Apr. 25	.10	103			912			71			28			39			1
May	969	May 2[9] May 13	 .25	134			859	May 6	.25	71	May 9 May 22	.97 1.07	31	May 9	.55	39	May 7	.25	2
June	841	June 19	.50	202			929	June 17	.44	74	June 17 June 26	1.17 1.27	33	June 16	.75	43	June 17	.44	2
July	646			278			949	July 8	.54	76	July 6 July 17 July 28	1.37 1.52 1.67	37	July 5 July 12	1.05 .95	40	July 8	.54	2
August	608	Aug. 24	.60	268			960	Aug. 25	.64	78	Aug. 11 Aug 30	1.77 1.92	47	Aug. 1 Aug. 25	.85 .95	41	Aug. 26	.64	2
September	560	Sept. 6 Sept. 8 Sept. 29	.75 .90 1.00	223			929	Sept. 6 Sept. 8 Sept. 29	.74 .89 1.00	81	Sept. 6	2.02	50	Sept. 6 Sept. 9 Sept. 29	1.05 1.20 1.30	42	Sept. 7 Sept. 9 Sept. 29	.74 .89 1.00	2
October	525			195			860			83	Oct. 4	2.12	50			40			2
November	453			192			856			78			50			41			2
December	451			188			847			75			46			39			2

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[1] 38°–38.9° gravity oil. 1933 prices from Oil Price Handbook, 1933, p. 152. Posted by Humble Oil and Refining Company, the largest purchaser in the field.

[2] Same as Mid-Continent.

[3] 38°–38.9° gravity oil in 1931; 36°–36.9° gravity oil in 1932 and 1933 (the change was necessitated by the change in the basis used by the Bureau of Mines). 1933 prices from Oil Price Handbook, 1933, p.

[4] 1933 prices from Oil Price Handbook, 1933, p. 145. Posted by South West Pennsylvania Pipe Line.

[5] 1933 prices from Oil Price Handbook, 1933, p. 146. Posted by Ohio Oil Company for the Lima, Ohio, field.

[6] 36°–36.9° gravity oil. 1933 prices from Oil Price Handbook, 1933, p. 164. Posted by Stanolind Oil and Gas Company.

[7] Grade B (below 25°) gravity oil, 1931 to December 1932; 24°–24.9° gravity oil for December 1932 and 1933 (the change was necessitated by the change in the basis used by the Bureau of Mines). 1933 pr Company.

[8] 30°–30.9° gravity oil in 1931; 27°–27.9° gravity oil in 1932 and 1933 (the change was necessitated by the change in the basis used by the Bureau of Mines). 1933 prices from Oil Price Handbook, 1933,

[9] Postings discontinued.

Prepared by the U. S. Bureau of Mines, Petroleum Economics Division.

V. THE EFFECT OF OVERPRODUCTION IN EAST TEXAS UPON PRICES

1. *Average daily production and posted prices, 1931–1933*

n Department of Commerce, Bureau of Mines, Mineral Resources of the United States, 1931, Part II (Crude petroleum and petroleum products), pp. 565, 566. 1932 production figures taken from Department of Commerce, Bureau -1933, Statistical Appendix (Crude petroleum and petroleum products), pp. 308–309. 1933 production figures taken from Department of the Interior, Bureau of Mines, Annual Petroleum Statement, 1933, No. P. 123, pp. 4–5. ndix B, pp. 110–112, 116–118, 121–123. Where daily average production is not directly given, it is computed by dividing the monthly production by the number of days in the month.

Department of Commerce, Bureau of Mines, Mineral Resources of the United States, 1931, Part II (Crude petroleum and petroleum products), pp. 608–610. Posted prices for 1932 taken from Department of Commerce, Bureau of , Statistical Appendix (Crude petroleum and petroleum products), p. 334. These tables are reprinted in Appendix B, pp. 113–115, 119–120. Posted prices for 1933 taken from Oil Price Handbook, 1933 (published by the National s' figures for 1933 have not as yet been published. Prices are given in dollars per barrel.

[Production in thousands of barrels]

Texas		Oklahoma City			Mid-Continent except east Texas and Oklahoma City			Appalachian			Lima-Indiana-Illinois			Rocky Mountain			Gulf Coast			California			Daily average production for total United States
osted price		Daily average production	Posted price		Daily average production	Posted price		Daily average production	Posted price		Daily average production	Posted price		Daily average production	Posted price		Daily average production	Posted price		Daily average production	Posted price		
te	Amount[1]		Date	Amount[2]		Date	Amount[3]		Date	Amount[4]		Date	Amount[5]		Date	Amount[6]		Date	Amount[7]		Date	Amount[8]	
		82			1,161	Jan. 1	$1.01	81	Jan. 1	$1.80	28	Jan. 1	$1.10	57	Jan. 1	$0.95	178	Jan. 1	$0.69	532	Jan. 1	$1.38	2,121
		98			1,157			83			27			59			179			533			2,162
7	$0.63	140			1,138	Mar. 10	.63	85			26	Mar. 6	.90	56	Mar. 5	.59	168			528	Mar. 20 Mar. 31	.68 .35	2,240
		172			1,127			82	Apr. 23	1.70	27			58			177	Apr. 21	.60	527			2,429
26	.33	177			1,124			78	Apr. 27	1.60	26			56			171			531			2,478
20	.20	193			1,100	June 1	.35	82	June 3	1.35	29	June 2	.70	57	June 1	.33	155	June 3	.44	521	June 19	.81	2,500
		154			1,016	July 11 July 23	.20 .40	76	July 11 July 29	1.20 1.40	30	July 11 July 24	.55 .70	53	July 9 July 24	.18 .38	147	July 8 July 24	.31 .40	519			2,523
13 22	.25 .68	24			922	Aug. 22	.66	74	Aug. 3 Aug. 17 Aug. 29	1.55 1.60 1.65	28	Aug. 18 Aug. 24	.85 .90	53	Aug. 22	.62	141	Aug. 22	.55	505			2,194
		22			946			89	Sept. 12	1.80	32			51			140			506			2,146
		116			1,003			93			33			49			148			505			2,364
2	.83	178			1,044	Nov. 2	.81	88	Nov. 1	1.70	34	Nov. 3	1.00	50	Nov. 2	.77	148	Nov. 2	.70	500			2,449
		167			1,019			87	Dec. 16	1.55	35			50			143			502			2,365
		121			919			81			34			48			134			501			2,162
		99			945			79			34			49			132			504			2,156
		112			924			80			37			50			129			502			2,176
1	.98	103			970	Apr. 1	.92	85	Apr. 25	1.75	37	Apr. 11	1.15	54	Apr. 11	.92	139	Apr. 11	.80	517			2,264
		110			947			86			39			49			142			502			2,221
		95			940			88			38			47			140			471	June 26	1.00	2,171
		95			928			80			38			49			143			472			2,150
		75			935			83	Aug 11	1.72	39			50			152			479			2,147
		75			920			83	Sept. 13	1.57	42			46			166			478			2,184
14	1.10	68			896	Oct. 15	1.04	76	Oct. 3	1.42	38			44	Oct. 15	1.04	156	Oct. 15	.90	472			2,116
		83			890			76			34			44			164			471			2,121
16	.75	73			860	Dec. 15 Dec. 20	.88 .69	73			31	Dec. 16	1.00	40	Dec. 15 Dec. 20	.88 .69	158	Dec. 19	.68	471			1,880
20	.50	109			875	Jan. 18	.44	72	Jan. 19 Jan. 21	1.27 1.17	32	Jan. 10 Jan. 18	.90 .70	41	Jan. 18	.44	161	Jan. 1 Jan. 19	.71 .58	461			2,102
		149			887			71			28			40			163			463			2,188
		200			914			71			29			41			183	Mar. 6	.48	428	Mar. 5	.75	2,425
25	.10	103			912			71			28			39			195			473			2,190
2[9] 13	 .25	134			859	May 6	.25	71	May 9 May 22	.97 1.07	31	May 9	.55	39	May 7	.25	214	May 3	.30	477			2,795
19	.50	202			929	June 17	.44	74	June 17 June 26	1.17 1.27	33	June 16	.75	43	June 17	.44	216	June 19	.42	476	June 26	.85	2,813
		278			949	July 8	.54	76	July 6 July 17 July 28	1.37 1.52 1.67	37	July 5 July 12	1.05 .95	40	July 8	.54	239			487			2,752
24	.60	268			960	Aug. 25	.64	78	Aug. 11 Aug 30	1.77 1.92	47	Aug. 1 Aug. 25	.85 .95	41	Aug. 26	.64	253	Aug. 25	.52	502			2,758
6 8 29	.75 .90 1.00	223			929	Sept. 6 Sept. 8 Sept. 29	.74 .89 1.00	81	Sept. 6	2.02	50	Sept. 6 Sept. 9 Sept. 29	1.05 1.20 1.30	42	Sept. 7 Sept. 9 Sept. 29	.74 .89 1.00	240	Sept. 6 Sept. 8 Sept. 29	.64 .79 .90	486	Sept. 6	1.00	2,611
		195			860			83	Oct. 4	2.12	50			40			231	Sept. 30	.92	470			2,454
		192			856			78			50			41			203			461			2,332
		188			847			75			46			39			206			471			2,328

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ces from Oil Price Handbook, 1933, p. 152. Posted by Humble Oil and Refining Company, the largest purchaser in the field.

°–36.9° gravity oil in 1932 and 1933 (the change was necessitated by the change in the basis used by the Bureau of Mines). 1933 prices from Oil Price Handbook, 1933, p. 148. Posted by Stanolind Oil and Gas Company.
dbook, 1933, p. 145. Posted by South West Pennsylvania Pipe Line.
dbook, 1933, p. 146. Posted by Ohio Oil Company for the Lima, Ohio, field.
ces from Oil Price Handbook, 1933, p. 164. Posted by Stanolind Oil and Gas Company.
il, 1931 to December 1932; 24°–24.9° gravity oil for December 1932 and 1933 (the change was necessitated by the change in the basis used by the Bureau of Mines). 1933 prices from Oil Price Handbook, 1933, p. 158. Posted by the Texas

°–27.9° gravity oil in 1932 and 1933 (the change was necessitated by the change in the basis used by the Bureau of Mines). 1933 prices from Oil Price Handbook, 1933, p. 165. Posted by Standard Oil Company of California.

f Mines, Petroleum Economics Division.

[illegible] EAST TEXAS UPON PRICES

Production of crude petroleum by districts and States and daily average production in principal fields and States in 1931, by months—Con.

[Thousands of barrels of 42 U. S. gallons]

	January	February	March	April	May	June	July	August	September	October	November	December	Total	Value at wells [1]
Mid-continent:														
Kansas	3, 102	3, 030	3, 299	3, 195	3, 244	2, 999	2, 862	2, 825	3, 105	3, 114	3, 060	3, 183	37, 018	25, 500
Oklahoma	15, 044	14, 160	17, 088	17, 437	18, 026	17, 683	16, 233	9, 117	8, 414	13, 724	16, 649	16, 999	180, 574	119, 200
Texas, exclusive of coastal Texas and west Texas	8, 789	8, 177	11, 122	15, 645	18, 266	18, 983	23, 955	21, 578	19, 066	21, 317	20, 045	18, 938	205, 881	102, 060
West Texas	7, 770	6, 908	7, 304	6, 782	6, 664	6, 465	6, 269	6, 341	6, 048	6, 178	5, 971	5, 824	78, 524	37, 270
Southeast New Mexico	1, 128	1, 031	1, 198	1, 154	1, 368	1, 229	1, 257	1, 275	1, 238	1, 284	1, 273	1, 269	14, 704	6, 040
Arkansas	1, 535	1, 369	1, 435	1, 378	1, 360	1, 291	1, 140	1, 112	1, 102	1, 094	1, 020	955	14, 791	7, 200
Northern Louisiana	1, 246	1, 189	1, 211	1, 140	1, 155	1, 028	918	897	883	902	845	830	12, 244	7, 850
Total, Mid-Continent	38, 614	35, 864	42, 657	46, 731	50, 083	49, 678	52, 634	43, 145	39, 856	47, 613	48, 863	47, 998	543, 736	305, 120
Gulf coast:														
Texas Gulf coast	4, 655	4, 190	4, 421	4, 478	4, 495	3, 979	3, 894	3, 692	3, 512	3, 615	3, 578	3, 523	48, 032	31, 620
Louisiana Gulf coast	855	817	780	822	813	678	652	693	687	978	867	918	9, 560	6, 370
Total, Gulf coast	5, 510	5, 007	5, 201	5, 300	5, 308	4, 657	4, 546	4, 385	4, 199	4, 593	4, 445	4, 441	57, 592	37, 990
ocky Mountain:														
Montana	252	242	255	250	258	249	233	218	242	242	181	208	2, 830	2, 730
Wyoming	1, 325	1, 237	1, 324	1, 331	1, 327	1, 262	1, 236	1, 254	1, 119	1, 102	1, 152	1, 165	14, 834	11, 120
Colorado	137	123	134	128	129	138	136	125	112	143	114	126	1, 545	825
Northwest New Mexico	48	48	33	41	31	58	42	52	42	45	45	38	523	450
Utah and Alaska	--------	--------	--------	1	1	1	1	1	1	1	--------	--------	7	15
Total, Rocky Mountain	1, 762	1, 650	1, 746	1, 751	1, 746	1, 708	1, 648	1, 650	1, 516	1, 533	1, 492	1, 537	19, 739	15, 140
California	16, 486	14, 931	16, 365	15, 804	16, 449	15, 641	16, 093	15, 669	15, 181	15, 652	14, 998	15, 561	188, 830	135, 960
Total, United States: 1931	65, 737	60, 540	69, 429	72, 860	76, 822	75, 011	78, 210	68, 014	64, 378	73, 297	73, 456	73, 327	851, 081	550, 630
1930	79, 633	74, 290	78, 226	77, 483	80, 528	77, 060	76, 922	74, 831	71, 216	72, 893	67, 957	66, 972	898, 011	1,070,200
Total, Ohio	496	447	482	468	461	464	411	372	440	453	400	433	5, 327	5, 610
Total, Indiana	74	70	61	69	70	78	74	67	70	70	67	70	840	750
Total, Texas	21, 214	19, 275	22, 847	26, 905	29, 425	29, 427	34, 118	31, 611	28, 626	31, 110	29, 594	28, 285	332, 437	170, 950
Total, Louisiana	2, 101	2, 006	1, 991	1, 962	1, 968	1, 706	1, 570	1, 590	1, 570	1, 880	1, 712	1, 748	21, 804	14, 220
Total, New Mexico	1, 176	1, 079	1, 231	1, 195	1, 399	1, 287	1, 299	1, 327	1, 280	1, 329	1, 318	1, 307	15, 227	6, 490

[1] Thousands of dollars.

Production of crude petroleum by districts and States and daily average production in principal fields and States in 1931, by months—Continued

[Thousands of barrels of 42 U. S. gallons]

DAILY AVERAGE PRODUCTION

	January	February	March	April	May	June	July	August	September	October	November	December	Total
California	532	533	528	527	531	521	519	505	506	505	500	502	517
Kettleman Hills	22	27	26	26	39	58	73	63	62	60	60	60	48
Long Beach	93	95	90	88	86	80	78	76	79	76	75	76	83
Santa Fe Springs	72	71	71	72	72	65	63	62	62	61	62	64	66
Kansas	100	108	106	107	105	100	92	91	104	100	102	103	101
New Mexico	38	39	40	40	45	43	42	43	43	43	44	42	42
Hobbs	30	30	32	33	39	36	36	37	36	36	38	37	35
Oklahoma	485	506	551	581	581	589	524	294	280	443	555	548	495
Oklahoma City	82	98	140	172	177	193	154	24	22	116	178	167	127
Seminole	156	145	157	153	152	146	136	75	61	101	151	142	131
Texas	684	688	737	897	949	981	1, 101	1, 020	954	1, 004	987	912	911
East Texas	3	26	98	259	315	363	528	446	360	417	407	362	300
Gulf coast	150	150	143	149	145	133	128	119	117	117	119	114	132
West Texas	251	247	236	226	215	216	202	205	202	199	199	188	215
Wyoming	43	44	43	44	43	42	40	40	37	35	38	38	41
Salt Creek	26	26	26	26	25	25	24	23	23	22	22	22	24
Other States	239	244	235	233	224	224	205	201	222	234	223	220	225
United States: 1931	2, 121	2, 162	2, 240	2, 429	2, 478	2, 500	2, 523	2, 194	2, 146	2, 364	2, 449	2, 365	2, 332
1930	2, 569	2, 653	2, 523	2, 583	2, 598	2, 569	2, 481	2, 414	2, 374	2, 351	2, 265	2, 160	2, 460

[Pages 608–610]

Average monthly prices per barrel for selected grades of crude petroleum at wells in 1931

	Pennsylvania grade		Oklahoma-Kansas, 34°–34.9°	Gulf-coast grade B	Illinois	Lima, Ohio	Pan-handle, Texas (Carson and Hutchinson Counties 35°–35.9°)	California (Long Beach, 30°–30.9°)	West Texas (Crane-Upton, etc., 30°–30.9°)
	Brad-ford	South-west Penn-syl-vania							
January	$2.15	$1.80	$0.89	$0.69	$1.30	$1.10	$0.63	$1.38	$0.62
February	2.15	1.80	.89	.69	1.30	1.10	.57	1.38	.62
March	2.15	1.80	.65	.69	.88	.93	.45	1.10	.43
April	2.11	1.76	.55	.66	.80	.90	.37	.35	.33
May	2.00	1.60	.55	.60	.80	.90	.32	.35	.30
June	1.77	1.37	.31	.45	.56	.71	.23	.53	.25
July	1.67	1.27	.26	.36	.49	.64	.18	.81	.17
August	1.97	1.57	.42	.45	.64	.78	.32	.81	.28
September	2.20	1.75	.58	.55	.80	.90	.43	.81	.35
October	2.20	1.80	.58	.55	.80	.90	.43	.81	.35
November	2.00	1.70	.73	.70	.94	.99	.58	.81	.50
December	1.92	1.62	.73	.70	.95	1.00	.58	.81	.50
	2.02	1.65	5.9	.59	.85	.90	.42	.83	.39

Posted price per barrel of petroleum at wells in 1931, by grades, with dates of change

Date	Pennsylvania grade		Corning grade in Buckeye Pipe Line Co. lines [2]	Western Kentucky [3]	Lima, Ohio [3]	Illinois and Princeton, Ind.[3]	Midland, Mich.[4]
	Bradford and Allegheny districts [1]	In Southwest Pennsylvania Pipe Line Co. lines [2]					
Jan. 1	$2.15	$1.80	$1.15	$1.15	$1.10	$1.30	$1.15
Mar. 6				.75	.90	.80	
Mar. 11			.80				
Mar. 13							.75
Apr. 23	2.00	1.70					
Apr. 27		1.60					
June 1							.52
June 2				.50	.70	.55	
June 3	1.75	1.35	.65				
July 11	1.60	1.20	.50	.35	.55	.40	.37
July 24				.50	.70	.55	
July 25							.57
July 28	1.80						
July 29		1.40	.65				
Aug. 3	1.95	1.55					
Aug. 17	2.00	1.60					
Aug. 18				.65	.85	.70	
Aug. 23							.73
Aug. 24				.75	.90	.80	
Aug. 29	2.10	1.65					
Sept. 1			.70				
Sept. 4			.75				
Sept. 12	2.25	1.80					
Sept. 16			.80				
Oct. 9							.55
Oct. 15	2.15						
Nov. 1	2.00	1.70					
Nov. 3				.90	1.00	.95	
Dec. 1			.85				
Dec. 16	1.85	1.55					
Average for year	2.02	1.65	.82	.78	.90	.85	.73

[1] The Tide Water Pipe Co. (Ltd.)

[2] The Joseph Seep Purchasing Agency.

[3] The Ohio Oil Co.

[4] The Pure Oil Co.

Posted price per barrel of petroleum at wells in 1931, by grades, with dates of change—Continued

Date	Kansas-Oklahoma; north and north-central Texas[5]		Panhandle, Texas (Carson and Hutchinson Counties, 35°-35.9°)[6]	West Texas, 30°-30.9°[6]	Hobbs, N. Mex., 35°-35.9°[6]	Darst, Tex.[6]	Southwest Texas, Mirando[6]
	34°-34.9°	38°-38.9°					
Jan. 1	$0.89	$1.01	$0.72	$0.62	$0.72	$0.90	$0.75
Jan. 14			.57				.69
Jan. 15	[7].67	[7].75					
Mar. 10	.55	.63	.40	[8].35	[8].40	.60	
Apr. 21			.32	.30	.32½	.53	.60
Apr. 23	[9].45	[9].53					
June 1	.31	.35					
June 3			.22	.25	.25	.37	.44
July 8	[9].16	[9].20	.12	.10	.10	.20	.35
July 11	(10)	(10)					
July 23	.35	.40					
July 24			[8].27	.25	.25	.37	.44
Aug. 22	.58	.66	.43	.35	.35	.52	.60
Nov. 2	.73	.81	.58	.50	.50	.60	.75
Average for year	(11)	(12)	.42	.39	.42	.57	.61

Date	Van, Tex., 34°-34.9°[4]	East Texas, 38°-38.9°[13]	Gulf coast			North Louisiana, 34°-34.9°[15]	Smackover, Ark.[15]
			Refugio, below 25°[6]	Grade A[14]	Grade B, below 25°[14]		
Jan. 1	$0.89		$0.75	$0.80	$0.69	$0.89	$0.70
Jan. 14			.69				
Mar. 10	.55					.55	.45
Mar. 27		$0.63					
Apr. 21			.60	.70	.60		
May 26		.33					
June 1	.31						
June 3			.44	(16)	.44	.31	.25
June 20		[8].20					
July 8			.31		.31		
July 10	.16						
July 11						.16	.15
July 24	.40		.40		.40	.36	.30
Aug. 13		.25					
Aug. 22		.68	.55		.55		
Aug. 24	.58					.58	.45
Nov. 2	.73	.83	.70		.70		
Nov. 4						.73	.55
Average for year	.60	.56	.59		.59	.59	.47

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[4] The Pure Oil Co.
[5] The Texas Co.
[6] Humble Oil & Refining Co.
[7] North Texas only.
[8] Gravity scale discontinued.
[9] North and north central Texas only.
[10] Oklahoma-Kansas quoted same as north and north central Texas.
[11] Oklahoma-Kansas, $0.59; north Texas, $0.55; north central Texas, $0.58.
[12] Oklahoma-Kansas, $0.67; north Texas, $0.62; north central Texas, $0.66.
[13] Magnolia Petroleum Co.
[14] Gulf Pipe Line Co.
[15] Standard Oil Co. of Louisiana.
[16] Put on gravity basis with grade B.

Posted price per barrel of petroleum at wells in 1931, by grades, with dates of change—Continued

Date	Salt Creek, Wyo. 36°–36.9° [18]	Sunburst, Mont.[3]	California [17]				
			Kettleman Hills 55° and above	Long Beach, 30°–30.9°	Midway-Sunset, 19°–19.9°	Playa del Rey, 22°–22.9° [19]	Santa Fe Springs, 33°–33.9°
Jan. 1	$0.95	$1.55	$1.65	$1.38	$0.70	$0.81	$1.48
Mar. 5	.59						
Mar. 20			(20)	.68	.55	.56	.68
Mar. 31				.35		(20)	.35
June 1	.33						
June 2		.85					
June 19				.81		.67	.83
July 9	.18						
July 10		.70					
July 24	.38						
July 25		.80					
Aug. 22	.62						
Aug. 24		.90					
Nov. 2	.77						
Nov. 3		1.00					
Average for year	.63	1.17		.83	.58		.86

[3] The Ohio Oil Co.
[17] Standard Oil Co. of California.
[18] The Midwest Refining Co.
[19] Subject to field gathering charge of 5 cents per barrel.
[20] Temporarily discontinued.

b. Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–33, Statistical Appendix (Crude Petroleum and Petroleum Products):

[Pages 308, 309]

Production of crude petroleum by districts and States and daily average production in principal fields and States in 1932, by months

[Thousands of barrels of 42 U. S. gallons]

TOTAL PRODUCTION

	January	February	March	April	May	June	July	August	September	October	November	December	Total	Value at wells[1]
Appalachian:														
New York	323	294	303	301	313	307	298	304	277	266	259	263	3,508	6,630
Pennsylvania	1,053	972	1,042	1,109	1,136	1,122	1,028	1,055	970	977	964	984	12,412	23,400
West Virginia	333	304	325	347	345	356	318	336	306	323	287	296	3,876	6,050
East and southeast Ohio	296	281	304	316	321	324	289	304	294	288	280	282	3,579	4,230
Kentucky	524	468	518	473	547	535	550	579	648	502	490	453	6,287	5,906
Tennessee	1	--------	--------	1	1	--------	1	--------	1	--------	--------	--------	5	4
Total Appalachian	2,530	2,319	2,492	2,547	2,663	2,644	2,484	2,578	2,496	2,356	2,280	2,278	29,667	46,220
Lima-Indiana:														
Northwestern Ohio	83	81	91	98	99	103	91	94	89	85	72	79	1,065	1,200
Northeastern Indiana	3	2	3	3	3	3	2	2	2	2	2	2	29	18
Michigan	483	423	475	534	592	531	601	644	742	745	594	546	6,910	5,260
Total Lima-Indiana	569	506	569	635	694	637	694	740	833	832	668	627	8,004	6,478
Illinois-Indiana:														
Southwest Indiana	69	70	66	72	73	75	71	71	62	49	50	49	777	810
Illinois	433	415	502	391	450	428	398	407	376	285	299	289	4,673	4,720
Total Illinois-Indiana	502	485	568	463	523	503	469	478	438	334	349	338	5,450	5,530
Mid-Continent:														
Kansas	3,014	2,774	2,932	2,951	2,973	2,774	2,948	3,039	2,960	2,945	2,846	2,692	34,848	31,720
Oklahoma	13,758	12,458	13,361	13,403	13,839	12,936	13,051	12,619	12,051	12,006	11,912	11,850	153,244	137,920
Texas, exclusive of coastal Texas and west Texas	17,170	15,979	17,891	18,124	18,147	17,779	18,029	17,860	18,300	18,396	17,517	12,101	207,293	184,740
West Texas	5,302	5,340	5,624	5,544	5,468	5,245	5,428	5,319	4,970	5,093	4,938	5,064	63,335	40,860

Southeast New Mexico	1,139	1,043	1,119	1,076	1,101	1,031	1,069	948	899	917	912	817	12,062	7,285
Arkansas	1,022	965	1,014	998	1,073	1,002	1,028	1,007	1,001	1,031	975	935	12,051	7,690
Northern Louisiana	833	779	809	846	875	858	867	886	870	863	863	842	10,191	9,170
Missouri		1	1	1	1	1	1	1	1	1	1		10	9
Total Mid-Continent	42,238	39,339	42,751	42,943	43,477	41,626	42,412	41,679	41,052	41,252	39,964	34,301	493,034	419,394
Gulf coast:														
Texas Gulf coast	3,259	3,031	3,108	3,152	3,315	3,284	3,472	3,729	3,975	3,797	3,869	3,859	41,850	34,100
Louisiana Gulf coast	882	784	855	1,018	1,077	924	975	979	992	1,044	1,047	1,039	11,616	9,380
Total Gulf coast	4,141	3,815	3,963	4,170	4,392	4,208	4,447	4,708	4,967	4,841	4,916	4,898	53,466	43,480
Rocky Mountain:														
Montana	171	210	220	239	227	223	229	222	188	189	163	176	2,457	2,560
Wyoming	1,192	1,088	1,176	1,251	1,178	1,059	1,163	1,203	1,067	1,043	1,031	967	13,418	10,942
Colorado	108	104	113	102	100	95	91	84	89	85	84	81	1,136	880
Northwest New Mexico	31	29	28	40	23	29	37	35	36	38	33	34	393	365
Utah and Alaska				1	1	1	1	1	1				6	11
Total Rocky Mountain	1,502	1,431	1,537	1,633	1,529	1,407	1,521	1,545	1,381	1,355	1,311	1,258	17,410	14,758
California	15,532	14,617	15,576	15,524	15,576	14,119	14,628	14,840	14,351	14,628	14,142	14,595	178,128	144,600
Total United States: 1932	67,014	62,512	67,456	67,915	68,854	65,144	66,655	66,568	65,518	65,598	63,630	58,295	785,159	680,460
1931	65,737	60,540	69,429	72,860	76,822	75,011	78,210	68,014	64,378	73,297	73,456	73,327	851,081	550,630
Total Ohio	379	362	395	414	420	427	380	398	383	373	352	361	4,644	5,430
Total Indiana	72	72	69	75	76	78	73	73	64	51	52	51	806	828
Total Texas	25,731	24,350	26,623	26,820	26,930	26,308	26,929	26,908	27,245	27,286	26,324	21,024	312,478	259,700
Total Louisiana	1,715	1,563	1,664	1,864	1,952	1,782	1,842	1,865	1,862	1,907	1,910	1,881	21,807	18,550
Total New Mexico	1,170	1,072	1,147	1,116	1,124	1,060	1,097	983	935	955	945	851	12,455	7,650

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[1] Thousands of dollars.

Production of crude petroleum by districts and States and daily average production in principal fields and States in 1932, by months—Continued

[Thousands of barrels of 42 U. S. gallons]

DAILY AVERAGE PRODUCTION

	January	February	March	April	May	June	July	A	September	October	November	December	Total
California	501	504	502	517	502	471	472	479	478	472	471	471	487
Kettleman Hills	60	60	60	60	59	60	61	60	59	59	61	60	60
Long Beach	79	81	83	82	80	72	71	73	71	68	70	70	75
Santa Fe Springs	65	66	66	66	64	60	58	59	59	64	57	58	62
Kansas	97	96	95	98	96	92	95	98	99	95	95	87	95
New Mexico	38	37	37	37	36	35	35	32	31	31	32	27	34
Hobbs	32	31	31	31	30	29	29	25	25	25	25	21	28
Oklahoma	444	430	431	447	446	431	421	407	402	387	397	382	419
Oklahoma City	121	99	112	103	110	95	95	75	75	68	83	73	92
Seminole	126	128	125	124	122	117	117	114	112	109	107	107	117
Texas	830	840	859	894	869	877	869	868	908	880	877	678	854
East Texas	322	312	343	358	345	353	345	334	373	367	359	173	332
Gulf coast	105	105	100	105	107	109	112	120	133	122	129	124	114
West Texas	171	184	181	185	176	175	175	172	166	164	165	163	173
Wyoming	38	38	38	42	38	35	38	39	36	34	34	31	36
Salt Creek	23	22	22	25	22	22	21	21	21	21	21	19	22
Other States	214	211	214	229	234	230	220	224	230	217	215	204	220
United States: 1932	2, 162	2, 156	2, 176	2, 264	2, 221	2, 171	2, 150	2, 147	2, 184	2, 116	2, 121	1, 880	2, 145
1931	2, 121	2, 162	2, 240	2, 429	2, 478	2, 500	2, 523	2, 194	2, 146	2, 364	2, 449	2, 365	2, 332

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Posted price per barrel of petroleum at wells in 1932, by grades, with dates of change

Date	Pennsylvania grade		Corning grade in Buckeye Pipe Line Co. lines [2]	Western Kentucky [3]	Lima, Ohio [3]	Illinois and Princeton, Ind.[3]	Midland, Mich.[4]	Kansas-Oklahoma; north and north-central Texas [5]	
	Bradford and Allegheny districts [1]	In Southwest Pennsylvania Pipe Line Co. lines [2]						34°–34.9°	36°–36.9°
Jan. 1	$1.85	$1.55	$0.85	$0.90	$1.00	$0.95	$0.55	$0.73	$0.77
Mar. 12	1.82								
Apr. 1								.88	.92
Apr. 11				1.05	1.15	1.10			
Apr. 25	2.02	1.75	.95						
May 17							.65		
June 30							.75		
July 13							.85		
Aug. 11		1.72	1.05						
Sept. 13	1.87	1.57							
Oct. 3	1.72	1.42	.85						
Oct. 15								1.00	1.04
Dec. 15								.82	.88
Dec. 16				.82	1.00	.87			
Dec. 20								.65	.69
Dec. 31							.95		
Average for year	1.88	1.59	.96	1.00	1.10	1.05	.71	.85	.89

Date	Panhandle, Texas (Carson and Hutchinson Counties 35°–35.9°)[6]	West Texas [6]	Hobbs, N. Mex.[6]	Darst, Tex.[6]	Southwest Texas, Mirando[6]	Van, Tex., 34°–34.9 [4]	East Texas [7]	Gulf coast	
								Conroe, 38°–38.9° [6]	Grade B, below 25°[8]
Jan. 1	$0.58	$0.50	$0.50	$0.60	$0.75	$0.73	$0.83		$0.70
Apr. 1							.98		
Apr. 11	.68	.65	.65	.75	.80	.88			.80
July 18								[9] $0.96	
Oct. 14							1.10		
Oct. 15						1.00			.90
Nov. 21					.70				
Dec. 15	.53	.50	.50	.60	.55	.65		.86	
Dec. 16							.75		
Dec. 19									[10].68
Average for year	.65	.60	.60	.70	.77	.85	.95	.95	.79

See footnotes at end of table.

Posted price per barrel of petroleum at wells in 1932, by grades, with dates of change—Continued

Date	North Louisiana, 34°–34.9° [11]	Smackover, Ark.[11]	Salt Creek, Wyo., 36°–36.9° [12]	Sunburst, Mont.[3]	California [13]				
					Kettleman Hills, 38°–38.9°	Long Beach, 27°–27.9°	Midway-Sunset, 19°–19.9°	Playa del Rey, 22°–22.9°	Santa Fe Springs, 33°–33.9°
Jan. 1	$0.73	$0.55	$0.77	$1.00		$0.75	$0.55	$0.67	$0.83
Apr. 11	.88	.65	.92	1.05					
June 26					[9] $1.01	1.00		.78	1.14
Oct. 15			1.04						
Nov. 7				.75					
Dec. 15			.88						
Dec. 16	[14] .59	.30							
Dec. 20			.69						
Average for year	.83	.61	.89	.99	1.01	.88	.55	.73	.99

[1] The Tide-Water Pipe Co., Ltd.

[2] The Joseph Seep Purchasing Agency.

[3] The Ohio Oil Co.

[4] The Pure Oil Co.

[5] The Texas Co.

[6] Humble Oil & Refining Co.

[7] Magnolia Petroleum Co

[8] Gulf Pipe Line Co.

[9] First posting.

[10] 24°–24.9°.

[11] Standard Oil Co. of Louisiana.

[12] The Midwest Refining Co.; Stanolind Oil & Gas Co., after Nov. 12.

[13] Standard Oil Co. of California.

[14] Caddo, 34°–34.9°.

c. Department of the Interior, United States Bureau of Mines, Annual Petroleum Statement, 1933, No. P. 123, pp. 4–5.

Production of crude petroleum in 1933, by States

[Thousands of barrels of 42 U. S. gallons]

	January	February	March	April	May	June	July	August	September	October	November	December	1933	1932
Arkansas	974	844	974	960	979	1,040	1,011	959	1,077	1,015	915	938	11,686	12,051
California	14,285	12,955	13,267	14,187	14,781	14,276	15,094	15,556	14,574	14,585	13,839	14,611	[1] 172,010	178,128
Huntington Beach	787	705	630	822	901	919	1,152	1,485	1,161	1,288	1,690	1,434	12,974	8,016
Kettleman Hills	1,796	1,610	1,850	1,797	1,932	1,854	1,970	1,936	1,899	1,871	1,468	1,656	21,639	21,960
Long Beach	2,021	1,867	1,820	2,196	2,263	2,210	2,301	2,340	1,966	1,805	1,713	1,893	24,395	27,436
Santa Fe Springs	1,683	1,471	1,504	1,614	1,667	1,616	1,669	1,662	1,482	1,420	1,139	1,302	18,229	22,538
Rest of State	7,998	7,302	7,463	7,758	8,018	7,677	8,002	8,133	8,066	8,201	6,829	8,326	94,773	98,178
Colorado	85	71	85	69	82	75	81	75	70	74	77	75	919	1,136
llinois	297	262	316	284	314	359	409	413	415	408	389	378	4,244	4,673
ndiana	49	46	52	50	51	62	68	70	71	75	73	70	737	806
Kansas	2,932	2,919	3,611	3,527	3,280	3,453	4,061	3,909	3,831	3,307	3,666	3,480	41,976	34,848
Kentucky	438	336	379	351	362	320	428	382	414	423	389	386	4,608	6,287
Louisiana	1,993	1,703	2,080	2,153	2,084	1,982	2,131	2,299	2,141	2,210	2,213	2,179	25,168	21,807
Gulf coast	1,074	935	1,146	1,253	1,253	1,222	1,346	1,448	1,373	1,438	1,444	1,374	15,306	11,616
Rest of State	919	768	934	900	831	760	785	851	768	772	769	805	9,862	10,191
Michigan	546	407	439	442	524	488	563	879	905	962	895	892	7,942	6,910
Montana	166	142	165	169	184	207	205	199	203	210	218	205	2,273	2,457
New Mexico	994	1,019	1,170	1,087	1,094	1,146	1,268	1,265	1,249	1,289	1,263	1,272	14,116	12,455
New York	254	240	272	245	223	256	256	280	286	292	279	298	3,181	3,508
hio	352	315	353	339	338	338	362	394	370	395	346	333	4,235	4,644
Cent. & Eastern	266	246	269	260	256	250	267	295	275	299	266	254	3,203	3,579
Northwestern	86	69	84	79	82	88	95	99	95	96	80	79	1,032	1,065
klahoma	12,955	12,774	15,669	11,957	13,243	15,545	18,813	19,043	16,607	15,479	14,936	15,230	182,251	153,244
Oklahoma City	3,379	4,164	6,207	3,102	4,144	6,063	8,620	8,320	6,689	6,029	5,749	5,846	68,312	33,807
Seminole	3,661	3,040	3,419	3,062	3,105	3,423	4,048	4,113	3,753	3,237	3,268	3,303	41,432	42,911
Rest of State	5,915	5,570	6,043	5,793	5,994	6,059	6,145	6,610	6,165	6,213	5,919	6,081	72,507	76,526
ennsylvania	972	900	1,004	993	1,045	1,061	1,080	1,113	1,108	1,188	1,086	1,074	12,624	12,412

[1] Central Committee of California Oil Producers.

Production of crude petroleum in 1933, by States—Continued

[Thousands of barrels of 42 U.S. gallons]

	January	February	March	April	May	June	July	August	September	October	November	December	1933	1932
Texas	26, 557	25, 183	34, 080	27, 697	46, 815	42, 504	38, 231	37, 325	33, 702	32, 860	28, 156	29, 499	402, 609	312, 478
Gulf coast	3, 924	3, 632	4, 523	4, 594	5, 383	5, 252	6, 077	6, 386	5, 839	5, 719	4, 645	5, 028	61, 002	41, 850
West Texas	4, 959	4, 408	4, 991	4, 963	5, 003	4, 875	4, 966	5, 122	4, 257	4, 177	3, 697	3, 926	55, 344	63, 335
East Texas	10, 877	10, 839	17, 363	11, 078	30, 039	25, 225	20, 027	18, 845	16, 800	16, 287	13, 602	13, 972	204, 954	121, 449
Panhandle	1, 419	1, 243	1, 480	1, 390	1, 339	1, 455	1, 528	1, 546	1, 404	1, 401	1, 203	1, 265	16, 673	18, 263
Rest of State	5, 378	5, 061	5, 723	5, 672	5, 051	5, 697	5, 633	5, 426	5, 402	5, 276	5, 009	5, 308	64, 636	67, 581
West Virginia	302	262	281	287	313	317	323	357	339	373	335	326	3, 815	3, 876
Wyoming	1, 005	872	985	909	923	954	934	964	956	929	888	908	11, 227	13, 418
Other	3	2	3	3	3	3	3	3	3	3	3	3	[1] 35	[2] 21
Total United States	65, 159	61, 252	75, 185	65, 709	86, 638	84, 386	85, 321	85, 485	78, 321	76, 077	69, 966	72, 157	905, 656	785, 159
Daily average	2, 102	2, 188	2, 425	2, 190	2, 795	2, 813	2, 752	2, 758	2, 611	2, 454	2, 332	2, 328	2, 481	2, 145

[1] Alaska, Mississippi, Missouri, Tennessee, and Utah.

[2] Alaska, Missouri, Tennessee, and Utah.

Production and indicated domestic demand of crude petroleum in the United States, in 1933, by fields of origin

[Thousands of barrels of 42 U. S. gallons]

Production	January	February	March	April	May	June	July	August	September	October	November	December	1933	1932
Appalachian:														
Pennsylvania grade	1, 655	1, 519	1, 681	1, 652	1, 705	1, 762	1, 793	1, 899	1, 870	2, 006	1, 833	1, 822	21, 197	21, 520
Other (inc. Kentucky)	578	465	525	484	494	442	561	529	552	570	523	516	6, 239	8, 147
Lima-NE. Indiana-Michigan	633	477	524	522	607	577	660	980	1, 001	1, 059	976	972	8, 988	8, 004
Illinois-SW. Indiana	345	307	367	333	364	420	475	481	485	482	461	447	4, 967	5, 450
Mid-continent:														
N. Louisiana and Arkansas	1, 894	1, 613	1, 909	1, 861	1, 811	1, 800	1, 796	1, 810	1, 846	1, 787	1, 684	1, 744	21, 555	22, 242
West Texas & SE. New Mexico	5, 934	5, 406	6, 131	6, 020	6, 075	5, 981	6, 198	6, 351	5, 474	5, 437	4, 917	5, 168	69, 092	75, 397
Other (Okla., Kans., N. Tex., etc.)	33, 562	32, 837	43, 847	33, 625	52, 952	51, 376	50, 063	48, 769	44, 045	41, 751	38, 417	39, 256	510, 500	395, 395
Gulf coast	4, 998	4, 567	5, 669	5, 847	6, 636	6, 474	7, 423	7, 834	7, 212	7, 157	6, 089	6, 402	76, 308	53, 466
Rocky Mountain [1]	1, 275	1, 106	1, 265	1, 178	1, 213	1, 278	1, 258	1, 276	1, 262	1, 243	1, 227	1, 219	14, 800	17, 410
California	14, 285	12, 955	13, 267	14, 187	14, 781	14, 276	15, 094	15, 556	14, 574	14, 585	13, 839	14, 611	172, 010	178, 128
Total	65, 159	61, 252	75, 185	65, 709	86, 638	84, 386	85, 321	85, 485	78, 321	76, 077	69, 966	72, 157	905, 656	785, 159

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[1] Includes Alaska.

2. Oil Weekly, May 15, 1933.—*Price Cuts Extend to Mid-Continent-Eastern Areas:*

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Crude-oil price readjustments which started in the East Texas field April 24 continued into the past week, having extended not only throughout Texas, New Mexico, Louisiana, and Arkansas, but also over Oklahoma and Kansas, and into Illinois, Indiana, Kentucky, and Ohio, as well as Michigan and the Eastern States. In all those areas crude oil is now sold at flat prices, which, in some instances, are only half of former postings, with gravity scales almost completely discontinued.

An important feature of the crude-price situation during the past week was further readjustment of the East Texas market structure, with additional major purchasers falling in line with the 25 cents per barrel posting for East Texas crude. By the middle of the week the 10-cent postings for that area, inaugurated April 24 by The Texas Company, had been completely abandoned, and the 25-cent level set up by Magnolia Petroleum Company April 26 was the generally accepted posted price, although Humble Oil & Refining Company continued paying what it terms the "going price" instead of using a posting.

EAST TEXAS SPOT MARKET WEAKENS

While there was general stabilization of the posted price for East Texas crude at 25 cents per barrel, there developed during the week, nevertheless, a tendency toward weakness, with the spot market declining appreciably. For although the price stood near the 25-cent level of official postings throughout the early part of the week, a price range of 17½ to 22½ cents per barrel developed on spot crude in the big field later in the week. That sag in the price began when the railroad commission announced May 10 that its existing rule would be continued to May 17.

Continuation of the order automatically assures an abundant supply of spot oil in East Texas another 10 days or more, as the 800,000-barrel daily allowable for the field is being stretched to about 1,000,000 barrels through overproduction of wells.

Because of the sustained high rate of production many purchasers will be forced to reduce their takings regardless of the price, having approached the saturation point on storage at tidewater points or being unable to continue rapid turnover on sales to plants on the Atlantic coast and in Europe. Any appreciable cut in purchases will promptly force the spot prices to lower levels.

GASOLINE CHEAP IN EAST TEXAS

Along with the unsettling of the crude oil market there was further weakening of the refined oil market in the big flush field, gasoline prices quoted at the end of the week by East Texas plants having hit a new low for some weeks at 1⅞ cents per gallon for U. S. motor grade, with indications that the bottom had not yet been reached. All plants are operating near maximum capacity or to the limit of their ability to move refined oils as manufactured. Crude oil for use in the plants is, of course, extremely plentiful. A drop of two cents per gallon in retail prices of Standard Oil Company (Indiana) during the week temporarily blocked gasoline sales into that Company's trade territory by East Texas plant owners until the latter began lowering their quotations.

NORTH TEXAS CRUDE SUPPLY SCARCE

In contrast with the softening of the East Texas crude oil market during the latter part of the past week, the supply of crude in North Texas became somewhat scarce with the 25-cent Mid-Continent flat price posting in effect, and in consequence premiums ranging from five to 10 cents per barrel were quoted by three independent refining companies. Olney Oil & Refining Company, LaSalle Petroleum Company, and Panhandle Refining Company were the concerns which raised their price offers above the official posted scale when they could not otherwise fulfill their requirements.

Those premium offers are reported to have forestalled shutting in of some pumping wells in the district because of the 25-cent price not being commensurate with lifting costs. King Royalty Company, one of the largest independent producers in the district, halted pumping operations on 44 of its leases, involving about 1,500 barrels settled production daily from 375 wells. In the Red River bed district, forming the Oklahoma-Texas border, about 700 barrels of settled production was withheld from the market furnished by Bell Oil & Gas Company when the price broke to 25 cents a barrel.

OKLAHOMA-KANSAS PRICES CUT

Although Oklahoma and Kansas had temporarily escaped the price cutting by which North and Central Texas and other Mid-Continent high-gravity crudes were taken off gravity schedules and leveled to a flat price of 25 cents a barrel, those states shared a similar fate when most major purchasers adopted that new price in accordance with action taken by Stanolind Crude Oil Purchasing Company May 6. Meanwhile there was also general adoption of the 25-cent flat price for North Louisiana and Arkansas crudes, that posting for those states having been initiated May 3 by The Texas Company.

An exception to the new flat price posting of 25 cents generally adopted by buyers of Oklahoma and Kansas crudes was the schedule announced by Magnolia Petroleum Company for Oklahoma crude effective May 9, involving abandonment of its former gravity scale prices and substitution of a new special gravity schedule which placed heavier oils on lower price levels than the new 25-cent posting just adopted by other purchasers. In that new schedule of Magnolia Petroleum Company, Oklahoma crudes below 28 gravity were priced at 20 cents per barrel, those ranging from 28 to 34.9 gravity were priced at 23 cents, and crudes of 35 gravity or higher were listed at 25 cents.

Differences in postings of various purchasers of North Louisiana and Arkansas crudes were wiped out in new postings generally adopting the flat price of 25 cents per barrel which applies to other Mid-Continent crudes.

Greater uniformity in prices paid for Smackover, Arkansas, crude also grew out of the new postings, all purchasers adopting a flat price of 20 cents a barrel except Louisiana Oil Refining Corporation, which retained its 25-cent posting for that field, although meeting the 25-cent flat price for North Louisiana crudes May 6, with exception of Urania oil, which was cut 10 cents to a new price of 15 cents. The company is the only buyer of Urania crude.

MID-WESTERN STATES

The spread of the price cutting into Mid-Western states started May 8, when Ohio Oil Company reduced Wooster crude from 70 cents to 50 cents per barrel at the wells, and on the following day the same company placed in effect reductions of 15 cents per barrel for oils from other fields of that region, cutting Lima crude to 55 cents per barrel, Indiana crude to 25 cents, Illinois and Princeton crudes to 47 cents, and Western Kentucky crude to 42 cents.

Effective May 8, the posted field price of Central Michigan crude oil was cut from 95 cents to 75 cents per barrel, Pure Oil Company initiating the reduction, but similar reductions being posted immediately afterward by all other pipe-line companies. Producers Pipe Line Company made a 20-cent reduction, as did the other companies, but is paying 80 cents per barrel, having previously maintained a posting of $1 per barrel while other purchasers were paying 95 cents. No change in the Muskegon posted price of $1 per barrel was announced.

EASTERN STATES REDUCTIONS

In the Eastern States prices were reduced 20 cents per barrel effective May 9, when The Joseph Seep Purchasing Agency announced new postings.

On the new schedule Pennsylvania grade oil in South West Pennsylvania Pipe Line System is priced at 97 cents per barrel, in Eureka Pipe Line Company system 92 cents, and in Buckeye Pipe Line Company 77 cents; while Corning grade in Buckeye Pipe Line Company system is now 50 cents a barrel.

Tide-Water Pipe Company, quotations effective May 9 list Pennsylvania grade oil in New York Transit Company lines and Bradford district oil in National Transit Company system at $1.27, as against $1.47 formerly.

3. National Petroleum News, May 10, 1933.—*Crude Prices Drop Under Pressure of East Texas Situation:*

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The topheavy situation created by the current production of more than 1,000,000 barrels of crude per day from east Texas has brought crude prices down throughout the midcontinent, in Pennsylvania, and in Central States fields.

Retail gasoline prices also were cut in amounts up to 3 cents per gallon throughout the marketing territory of Standard Oil Co. of Indiana. The cut came May 8, just a few days after President E. G. Seubert gave out a statement saying that conditions appeared to be reaching a point where the industry would have to speak its piece with prices.

Stanolind Oil & Gas Co. (Standard of Indiana subsidiary) also led the way May 6 in spreading the Texas crude cuts into Oklahoma and Kansas. A price of 25 cents was posted on all grades. Other companies followed quickly. Oil is oil and oil is "two bits" in the midcontinent now. Gravity doesn't matter.

On May 6 Standard of Louisiana extended the cut to Louisiana-Arkansas fields. May 8 Wooster, Ohio, crude was cut 20 cents by Ohio Oil Co. and on May 9 other Central States crudes were cut 15 cents when Pennsylvania dropped 20 cents.

East Texas crude prices firmed up around the 25-cent level at the close of the past week, with only Atlas Pipe Line Co., Sun Oil Co., and The Texas Co., among the large purchasers, still paying 10 cents. Gulf Production Co. and Humble Oil & Refining Co. had withdrawn postings while Sinclair-Prairie led off with an advance from a price of 10 cents to 25 cents per barrel followed by other large buyers. Magnolia Petroleum Co. had never cut below 25 cents.

Results of the cut on production levels in Oklahoma began to be seen May 8. Following a meeting of Oklahoma City producers that day, 26 operators pledged themselves to withhold from the market, production from the 218 wells they own until the price reaches the point where it is profitable. The largest of these were the Anderson-Prichard Oil Corporation and the T. B. Slick interests.

Some others who did not formally put themselves on record are following the same course and pipe-line runs from the field were falling off rapidly. Most of the operators will continue to take their allowable production until tankage is full.

Kansas Corporation Commission, May 8, decided after a conference with Governor Landon, that the proposed order shutting in State fields would not be issued, but producers in prorated areas were assured that if they elected to shut in they could produce later the amount of oil due them in May.

Chairman Hoch said the Governor had talked to Governor Murray, who said he had no intention of trying to shut in Oklahoma fields at this time pending developments in Washington.

Meantime east Texas continues to reach higher levels of output. The 24-hour period ended Sunday morning, May 7, was the record for the field to date. Movement by pipe line, tank car, and to local refineries totaled 979,600 barrels. In addition there were 843 wells from which production was not sold, but nearly all of which were producing some amount of oil. The total for the field was estimated to be more than 1,200,000 barrels.

The movement for May 8 was 913,300 barrels, but the number of wells refusing to sell oil had dropped to 642. At one time more than 1,100 wells were withholding production from the market, but the general posting of 25 cents is bringing them back into the market.

Explaining the drastic cuts in retail gasoline prices, President Seubert, of Standard of Indiana, said that overproduction has brought about a chaotic condition in the gasoline market so that gasoline is selling below cost at hundreds of points.

In the past, he said, the company has tried to meet local situations as they arose, but "cut-throat" competition has become so general "that we are obliged to recognize it as effective throughout our territory and act accordingly."

The effort of the company has been, in the new postings, to level out the territory on a new basis roughly 3 cents below the old "normal" price level. Advances were made at some points.

4. Oil and Gas Journal, January 25, 1934.—Smiley, *All Records Smashed in 1933, When Motorist Paid Only 12.76 Cents for His Motor Fuel:*

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All-time records were splintered in 1933, when motorists in the United States paid an average of only 12.76 cents a gallon for their gasoline, according to figures based on service-station prices which prevailed throughout the year in 50 representative cities. Whatever they paid in addition to this was not for gasoline. It was for taxes, which ranged from 3 cents in a few—extremely few—areas to 8 cents gleaned from the consumer in several States.

This average service-station price in 1933, exclusive of taxes, compares with 13.30 cents paid in the same 50 cities in 1932. The degree to which the automobile owner benefited from prices brought about not only by advances in refining methods but by a delirious market in which business considerations were flung to the winds is revealed by contrasting the 12.76 cents paid in 1933 with the 19.10 cents paid in 1924, the 19.92 cents in 1925, and 20.92 cents in 1926. This takes no account of the vastly improved quality of motor fuel and the revolutionized filling-station service.

The year 1933, like its successor, opened with a falling gasoline market, and beginning with February new all-time lows were recorded. Up to that time June and September 1931 reflecting extremely cheap crude, had owned the distinction of the lowest 50-city net average price for gasoline, 12.21

cents having been the record for each of these months.

February 1, 1933, with its net average of 11.63 cents, spoiled that record, only to be shoved into the background itself by the March 1 net of 11.49 cents. A feeble effort at recovery ensued, but the best it could do was to register 11.58 cents as the 50-city average on April 1 and 11.60 cents on May 1. Then came a resumption of the retreat. May closed with a net of 11.1 cents and reductions in the Rocky Mountain district on the first day of June brought the average down to the new all-time low of 10.82 cents on that date. Motorists in Wichita, Kans., for instance, were filling their tanks at 7.1 cents a gallon net. Those in Kansas City, Mo., were paying 8.2 cents.

A glance at the accompanying table shows how in each of the first eight months of the year the 50-city price average in 1933 fell below that of the corresponding month in 1932. Beginning with a difference of one-third of a cent in January, the spread grew until there was a gap of 2.86 cents between the average net of 13.68 cents on June 1, 1932, and the 10.82 cents on June 1, 1933. Then the trend was reversed, until September 1, 1933, recorded an average net of 14 cents, as compared with 13.65 cents on the same date in 1932. Higher averages continued to the close of the year, when 14.3 cents net compared with 12.54 at the close of 1932.

Conditions similar to those which in 1931 dragged the prices of oil and its products to what were then the lowest levels since the World War were responsible for the debacle in gasoline prices in the first half of 1933. Proration programs of various kinds put into effect in 1932 bolstered crude prices so that in the Mid-Continent territory the average for the year was 35 percent higher than in 1931. Gasoline prices experienced a slight bulge in sympathy with the upward movement in crude. But this brightening aspect faded in the latter part of the year when evidence accumulated that proration was not accomplishing what had been expected of it, largely because of defective enforcement.

Price cutting in both crude and its products was added to the evils which beset the refining and marketing divisions of the oil industry in 1932, and after a peak of 14.21 cents in the 50-city average had been reached July 1 a gradual recession set in. Producers seeking quick disposition of their oil sold it below posted prices, and enough of this underpriced oil was thrown on the market to depress the prices of gasoline.

This unhealthy condition of the gasoline market was carried over into 1933. Mid-Continent crude, 36 gravity, began the year with a posted price of 69 cents at the well, but in early May it dropped to 25 cents, and it stayed there till mid-June, when it got back to 44 cents. East Texas crude was obtainable for a time at 10 cents a barrel.

Overproduction of both crude oil and gasoline, along with price cutting and other ruinous practices, had the inevitable effect of wrecking the gasoline market. A dismal outlook confronted refiners and marketers at the beginning of June. A flood of cheap motor fuel from East Texas was finding outlets in the Middle West and the Southeast, and refiners in other districts were compelled to compete with it. The result was that in some areas gasoline prices were declining in the period of maximum consumption.

5. Oil and Gas Journal, Jan. 25, 1934.—Ziegenhain, *Although 1933 Ended with Higher Refined Prices, Year Worst in Industry's History:*

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The speedy recovery of refined oil prices during the last half of 1933 from the lowest level reached in the history of the industry provides an optimistic atmosphere with which to usher in the new year, but this improvement was not enough to keep 1933 from being marked the "worst ever."

After passing through 2 years of abnormally low refined-oil prices, students of the market felt that a turn would need to come in 1933. As the year progressed, however, there was an ever-increasing flow of crude oil from the east Texas field which could not find an outlet in the normal channels. Producers in the east Texas field sought outlets of one kind or another, and that oil found its way to the refineries in the Chicago area, throughout the midcontinent, the Atlantic coast, and great volumes of it were transported to the Gulf coast to be refined there and abroad. The only important refining area which was not reached directly by east Texas crude was California, but even there the local gasoline market had to absorb several cargoes of east Texas gasoline shipped all that distance through Gulf coast terminals.

The growth of refining activities abroad as a result of foreign purchases of cheap east Texas oil also helped to stifle the California export market, so it may be said that not a single area escaped the destructive influence of overproduction in east Texas.

It becomes apparent then that the review of the trend of refined-oil prices during the year becomes somewhat of a summary of the control of production in east Texas. With this true, more attention will be given here to that subject than would ordinarily appear in a refined-oil market study. Those who followed crude-oil price changes throughout 1933 will remember the posting of 25 cents for 36 gravity crude on May 5, a drop of 45 cents a barrel from the 69-cent price at which crude of this grade was selling on the first day of the year. This price was maintained for 45 days and during that time oil sold in east Texas for as low as 8 cents a barrel. In May, records show that for one week approximately 3,000,000 barrels of crude were produced daily while domestic refineries were processing but 2,400,000 barrels. Producers in the east Texas area saw signs of water encroachment and they seemed to dedicate their lives to recovering the oil from under their lands regardless of ultimate return. There were many of them who built small plants in the field and by the end of the year there were 53 such plants there. Those plants which were built simply as an outlet for producers of so much crude will probably be abandoned as pipe lines seek the oil. It appears we are entering that period now.

GASOLINE PRICES

Those plants which were built simply to process crude which could not be sold otherwise caused gasoline and fuel-oil prices in the midcontinent and Gulf coast to reach ridiculously low levels and, of course, the Atlantic coast and California refinery markets, together with those of the Chicago and western Pennsylvania areas suffered also.

United States motor gasoline sold as low as 1⅞ cents in Oklahoma in April and May and much gasoline below 60 octane left Gulf coast terminals at 3 cents, a price unheard of in export circles before this mad scramble to convert crude oil into cash.

FUEL OIL

While this was in progress, fuel-oil prices sank to an equally ridiculous level. Oklahoma refiners received but 27½ cents a barrel for 16-gravity oil and in east Texas refiners were offering it for 5 cents a barrel if a guarantee was made to remove it consistently. Large earthen reservoirs were dug to hold the fuel which was accumulating in the east Texas field. Bunker C oil went to 70 cents a barrel in the New York Harbor.

NATURAL GASOLINE

Although natural gasoline is not a direct product of crude oil, it did not escape the demoralized oil market. In June, 27–70 natural gasoline sold for 1 cent a gallon in Oklahoma. Remembering this fact and then finding that on July 1 the price was 3 cents and on October 1 was 5 cents, it becomes quite evident that forceful and effective influences must have come into the picture. This price advance was more pronounced than in other products but clearly portrays the ability of prices to respond to the program of control established under the oil code. In the months which immediately followed the adoption of the oil code and recognition of Secretary Ickes as the one controlling agent in the matter of crude production, refinery operations, and the storing of crude and refined products, prices were advanced along the entire front. From June 1 to the middle of September, low octane United States motor gasoline advanced from 2 cents a gallon to 5 cents and other products showed similar gains.

Approximately 250,000 barrels were cut off the daily production of crude within that time and gasoline stocks were reduced about 5,000,000 barrels. In the months which followed plans were formulated by the Planning and Coordination Committee under Administrator Ickes for the complete control of gasoline production, gasoline stocks, and, of course, a definite limit was also placed upon the production and storing of crude by allotting quotas to the individual States.

SHARP PRICE ADVANCE

The plan was received enthusiastically, and as the plans went into operation prices began to rise very quickly. On September 29, 36 gravity midcontinent crude was posted at $1, a compromise price between the $1.10 which the proponents of "price fixing" said was necessary to yield a fair return to the producer for his crude and the 89-cent price which was then in effect. On October 4, Pennsylvania grade crude in National Transit lines was posted at $2.45, a new high for the year, and 25 gravity Signal Hill California crude went to 94 cents a barrel. Throughout this period in the year crude production showed a decline weekly. Optimism in the refinery markets was at its highest.

VI. EFFECT OF OVERPRODUCTION IN EAST TEXAS UPON OIL FIELDS THROUGHOUT THE COUNTRY

1. Statements during Hearings on the National Industrial Recovery Act before the Senate Committee on Finance, Seventy-third Congress, First Session (S. 1712, H. R. 5755):

RUSSELL B. BROWN, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

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Attempts to meet this situation have been made by various oil-producing states. Attempts have been made to correlate the limitation regulations of the various states. Such attempts have failed. It is only natural that a state having large flush areas should desire the largest possible production. Any suggestion that one state should limit the production in order that oil fields in another state might have a fair opportunity in the market has been unsuccessful. A suicidal production race has resulted. New fields, with lowest production costs have taken the market from other fields, until still newer fields have entered this race.

The inevitable followed. Excessive quantities of petroleum have been spasmodically produced. The price in a glutted market naturally fell. It is today so low that oil from some of the newer fields can be bought far below the production cost of the older fields. If this continues, older wells of settled production must suspend operations, since they cannot continue at a constant loss. This involves a staggering loss to the entire Nation. There are over 300,000 of these older wells. The oil reserves they touch are greater than the expected production from the newer fields with which they are forced to compete. Viewing the situation solely from the standpoint of conservation of an irreplaceable national resource, the abandonment of flush areas would mean less of a loss to the Nation than the abandonment of these 300,000 wells. Furthermore, the flush areas themselves will not long be free producing. It was stated recently at a hearing in Texas that the great east Texas field would soon go on the pump. Because of the open production from the 10,000 wells in this field, such damage has been done that it is now expected that only about 1,140,000,000 barrels of oil will be ultimately recovered out of the expected 1,800,000,000 barrels. This represents a tremendous loss, not only to the various owners of the field or to the oil industry but to the American people.

Situations like this cannot be met by any system or set of rules or regulations which might apply to a factory industry. It cannot even be met by a system which might have application to other natural resources. Special provisions must be made for determination of the market demand for petroleum, for the definite allocation of that demand to the oil-producing States and the equitable distribution of a State's quota among various fields, pools, and common sources of oil within a State. Furthermore, care must be taken in the interest of conservation of this national resource, so important in our economic life, to prevent the premature abandonment of wells of settled production. This involves the establishment of a minimum price not less than the average operating cost of such wells. Equally important is the establishment of a maximum price in order to prevent the exploitation of the consuming public.

JOSEPH S. BRIDWELL, PRESIDENT OF THE NORTH TEXAS OIL & GAS ASSOCIATION

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I appear before your honorable committee as a citizen of Texas, an independent oil producer in north Texas, east Texas, and Oklahoma, and as president of the North Texas Oil & Gas Association, which has gone on record as favoring Government control, and representative of the Oklahoma Stripper Well Association and the Kansas Stripper Well Association.

The north Texas district, comprising some 15,000 wells, was originally discovered about 1904 and has gradually developed to its present total of about 15,000 wells, which naturally makes oil a principal resource of that district. The present chaotic condition in the oil industry is occasioned by the excessive production in Texas, where there is a market for approximately 800,000 barrels of oil and where there is now a production of more than 1,500,000 barrels, causing a surplus of more than 700,000 barrels, which has demoralized the market to the extent that we are now only receiving 25 cents per barrel for our oil. The north Texas district is producing approximately 3 barrels per well, or a total of 46,000 barrels from approximately 15,000 wells, which necessarily, with the present price, means the absolute abandonment of most of the wells in this district unless action is taken by Congress.

* * * * *

The present chaotic condition has compelled a great reduction in salaries in the oil field in our district during the last 30 days, as we are dependent upon the revenues from this oil to take care of our operating expenses. If the present condition prevails, thousands of wells will be plugged and thousands of men will necessarily be laid off and be without employment. This alone with the waste that naturally would result from the plugging of these wells is certainly reason enough for Congress to take a definite hand in regulating the production of America to the market requirement.

W. W. WARNER, PRESIDENT OF THE OKLAHOMA STRIPPER WELLS ASSOCIATION

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The stripper wells of the Nation, which constitute one of our most valuable natural resources, must close unless there is some positive certainty that the present condition in the industry will be so remedied that they can operate profitably. * * *

In behalf of the Oklahoma Stripper Well Association, of which I am president, and of like associations of stripper-well owners in Kansas and Texas who join with us for this purpose, I urge that the demoralized petroleum industry be given its chance to recover under the carefully drawn and definite provisions of the Federal oil-control bill, rather than under some general plan which may be ideal for other industries, but which does not consider the unique problems of the production, processing, transportation, and distribution of petroleum products.

The stripper wells are the older wells of the industry. Some of them are 50 years old. They have been called "the backbone of the industry." The present flush wells will be the stripper wells of the future. Abandonment of these wells will mean the complete loss of one of the Nation's most valuable sources of wealth. That abandonment will be prevented by the Federal oil-control bill. * * *

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Resolution of stripper-well conference (Presented by Mr. Warner):

Whereas the delegates to the stripper-well conference, composed of representatives of oil and gas associations from the States of Kansas, Texas, and Oklahoma, convened in the city of Oklahoma City, Okla., on the date of May 24, 1933, and acting as a committee of the whole adopted the following resolutions:

"Whereas because of the ruthless and uneconomic overproduction of crude oil, the price structure has collapsed and thousands of wells of the stripper class, numbering more than 300,000, are on the threshold of being abandoned; and

"Whereas there is pending before the Congress of the United States a bill known as the Marland-Capper bill, the purpose of which is the conservation of crude petroleum and to preserve the same as a natural resource, not only for the future welfare of the Nation, but as a very vital item in national

"Whereas Federal intervention is welcomed as a means toward correcting the evils and corrupt practices which have driven the oil industry from a secure and profitable business into a state of chaos and bankruptcy; and

"Whereas the failure to delay the imposition of Federal control at this critical period will render definite and certain the loss of a valuable natural resource in the form of the stripper-well production, essential to the future welfare and property of many individuals, cities, and towns, and State governments who are directly and indirectly dependent on the prosperity of the petroleum industry; and now therefore be it

"*Resolved,* That the Stripper-Well Congress go on record in an affirmative manner, endorsing the Marland-Capper bill in its entirety; and be it further

"*Resolved,* That copies of this resolution be forwarded to the Secretary of the Interior, Secretary of War, to United States Senators and Representatives in the States wherein petroleum is produced, and to the Chairman of the House Ways and Means Committee, and to the press for publication, with the admonition to all that the vigorous administration of the bill, if enacted into law, will elevate the industry from bankruptcy to peace and prosperity, and contribute in a large degree to the general recovery of all business in the entire Nation."

Resolution offered by Smith, of Ardmore, Southern Oklahoma Oil & Gas Association.

Seconded by Mr. Weiner, Kansas Stripper-Well Association.

I. C. GRIMM, REPRESENTING THE GOVERNOR OF THE STATE OF OHIO

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As representative of Gov. George White and of the oil and gas associations of Ohio, I wish to submit for your serious consideration the following information concerning the deplorable condition of the oil industry in our State.

There are more than 36,000 producing oil wells in Ohio. This is one-ninth of all the oil wells in the United States. The average production of these wells is one-half barrel per well daily.

There are about 330,000 producing oil wells in the United States. Of this number, 250,000 produce one half barrel or less per well daily; 300,000 produce less than 1 barrel per day. Yet these "stripper wells" are the settled, dependable "back-log" of the oil industry. * * *

As a result of prevailing conditions of the oil industry in Ohio, thousands of high-paid workers are idle. The demand for equipment, such as belts, wire cables, gas engines, tubing, line pipe, casing, tanks, and derricks, are practically nil—this making other thousands idle. The State, county, and township lose large sums in taxes, which in turn closes schools and other activities. More than 2,000,000 acres of leases of oil and gas lands at $1 per acre have been surrendered, and this rental money paid the taxes of thousands of farmers, and these taxes are unpaid.

The principal cause of this crisis in the oil industry is overproduction in the flush pools in Western States. Bootleggers, proration violators, and the sellers of "hot oil" have caused demoralization in the industry, all of which is reflected by price cuts passed on to the producer, so that he cannot continue in business much longer. * * *

The average lifting cost per barrel for this settled production in Ohio is about $2 per barrel, and the present sale price is from 50 to 90 cents per barrel.

Since 1929 the price of our oil called "Pennsylvania Grade" has dropped from $2.70 to 77 cents per barrel on May 9, 1932. Other grades are quoted at a considerable less price.

ARTHUR SEELIGSON, SAN ANTONIO, TEX.

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* * * * *

Oil today is being produced far under the cost of production. Sixty thousand small pumping or so-called "stripper" wells in Texas and Oklahoma, producing approximately 200,000 barrels of oil a day, are at stake. They, together with the settled production in other States, form the backbone of the oil industry. Do not lose sight of the fact that the flush pools of today become the settled pools of tomorrow and must be preserved. Unless there is some immediate improvement, these wells will have to be abandoned, and once abandoned are lost forever.

RALPH J. ZOOK, REPRESENTING THE GOVERNOR OF PENNSYLVANIA AND THE PENNSYLVANIA GRADE CRUDE OIL ASSOCIATION

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* * * * *

As representative of the Governor of the State of Pennsylvania, and as president of the Pennsylvania Grade Crude Oil Association, an organization composed of 400 producers, 30 of the 39 refineries running Pennsylvania grade oil, and 500 jobbers throughout the United States, I wish to submit the following information for the consideration of the committee.

The Pennsylvania grade crude oil is produced in the western part of New York State, western Pennsylvania, western West Virginia, and eastern Ohio, throughout a territory consisting of approximately 170,000 acres, and from 146,000 of the total 300,000 settled producing wells of the United States.

The United States Tariff Commission, in a survey under report no. 30, second series, determined the cost of producing oil in the various oil-producing States of the United States and which developed the following average costs. With this cost, and in the second column is shown the present market price for Pennsylvania grade oil in the different States:

	Average cost, all companies	Present market price Pennsylvania grade
Ohio [1]	$2.00	$0.90
West Virginia	2.21	1.02
Pennsylvania	2.80	1.33
New York	3.00	1.37

[1] Includes all of Ohio, part of which is not Pennsylvania grade oil. The Ohio-Pennsylvania Grade Oil Producers Association estimate the cost of producing Pennsylvania grade at well above $3 per barrel.

A comparison of the average cost with the present market price shows clearly a deplorable condition in the Pennsylvania oil industry. The present market price is less than 50 percent of that needed to maintain the production of this area and shows the Pennsylvania producing industry losing at the rate of over $25,000,000 yearly.

Refineries running on Pennsylvania grade oil are not economically equipped to refine other grades of crude, and a continuation of the present destructive prices will mean the eventual elimination of the Pennsylvania producer, and in time the refiner and marketer.

* * * * *

It is not for me to suggest the decision of the committee but to make the statement that under present conditions the Pennsylvania producing industry and later the refiners and marketers will become annihilated and take with it the banks, supply stores, merchants, and allied interests in the area covering western New York State, western Pennsylvania, West Virginia, and southeastern Ohio, and we ask that you consider that an emergency exists. It is a question of a short time before producers do not have sufficient income to repair leaby casing, wells are abandoned, and water comes in which forever eliminates the possibility of again producing oil from these wells. Under present prices the Pennsylvania producer's days are numbered.

Price relationship Oklahoma crude 36 grade and Bradford crude

	Bradford	Oklahoma	Difference	Percent of Oklahoma		Bradford	Oklahoma	Difference	Percent of Oklahoma
1911	$1.31	$0.46	$0.85	284	1922	$3.20	$1.70	$1.50	188
1912	1.60	.67	.93	238	1923	3.33	1.56	1.77	213
1913	2.46	.94	1.52	261	1924	3.70	1.63	2.07	227
1914	1.87	.76	1.11	246	1925	3.76	1.87	1.89	201
1915	1.70	.60	1.10	283	1926	3.77	2.13	1.64	177
1916	2.51	1.26	1.25	199	1927	3.16	1.38	1.78	229
1917	3.25	1.81	1.44	179	1928	3.36	1.31	2.05	246
1918	3.97	2.20	1.77	180	1929	3.95	1.37	2.58	288
1919	4.12	2.28	1.84	180	1930	2.60	1.23	1.37	211
1920	5.97	3.42	2.55	174	1931	2.02	.63	1.39	321
1921	3.33	1.65	1.68	202	1932	1.88	.88	1.00	214

2. Statements during Hearings on Conservation of Petroleum before the Committee on Ways and Means, House of Representatives, Seventy-third Congress, First Session (H. R. 5720, S. 1736):

T. S. HOGAN, REPRESENTING GOV. F. H. COONEY, OF MONTANA

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* * * In order to undertake to present the situation in the briefest and simplest form I submit the following summary of facts:

1. The producing oil wells in the United States have a combined capacity to produce many times as much oil per day as the market can consume.

2. Five great oil pools—East Texas, Yates, Kettleman Hills, Conroe, and Hobbs; 3 of which are in Texas, 1 in California, and 1 in New Mexico—if permitted to produce without restriction from their flowing wells, will destroy and render utterly valueless every stripper-well field and nearly all of the other fields of the country. Included in the areas unable to compete is all of the country east of the Mississippi with some 190,000 wells whose combined production averages about 108,000 barrels per day.

3. There is no power either in the States that would be adversely affected or in all of the oil operators of such States to protect themselves against this ruinous competition.

4. In spite of the great temporary capacity of flowing wells the total supply of oil reserves in every known field in the United States is only somewhere between twelve and fifteen billion barrels. With restored prosperity that supply would be exhausted in 12 years.

5. About 12 billion dollars are invested in the oil business directly and about 30 billion dollars in oil-powered vehicles and other machinery. No

rapid change can be made from oil products to other power for these machines.

6. Attempted control by interstate agreement is a demonstrated and continuing failure. The necessary authority for effective control is entirely lacking. * * *

The amount of oil in storage is roughly 590,000,000 barrels. That would supply the Nation for 9 months. The existence of so large a stock in storage is a constant menace to the stability of the price structure and it would be desirable if that supply could be reduced at the rate of 100,000 barrels per day, or 36,500,000 barrels per year. * * *

If it is true that east Texas has a potential, as has been stated here, of over 100 million barrels per day, that would seem to indicate that it could produce more than 40 times the Nation's requirements. If one group controlling a minority percentage of the field can, as has been claimed, produce 7 million barrels per day, then they alone can produce three times the amount of oil which the Nation can consume.

No stronger argument demonstrating the need of Federal supervision could be made. It is only fair to this committee, however, to say that the potential recently taken by the Railroad Commission of the east Texas field, and which showed a total potential of 123,360,000 barrels per day, does not show the true potential of that field. There is not a petroleum engineer or an experienced oil man in the world who would seriously claim that that wonderful field could produce anything like that amount even for one full day.

In making that test the highest number of wells opened to flow at any one time was 53 out of 10,000 wells in the field. The time of the test was only two hours. All the wells in the field had been closed for several days before the test was made. But after all allowances are made it is very evident that this one field can produce for sometime more oil than the whole Nation can use. If permitted to do that, it will break every independent operator in America, including these gentlemen who so vociferously protest against interference with their inalienable right of self-destruction.

In addition to the financial disaster which this policy would entail, the effect on the field itself would be almost equally disastrous. Time forbids an analysis of the physical waste involved in the unrestrained production of the field, but an illustration of what happened in the Winkler field in west Texas may be enlightening to the committee.

That field was brought into production in 1927 before there was any proration, either voluntary or mandatory, and at one time it reached a peak production of 367,000 barrels per day. Like in east Texas the wells came in with a high potential flow, the largest being about 60,000 barrels per day. The only restraint on production was the ability to find an outlet by train or pipe line or the building of storage.

Consequently, every producer tried to produce the greatest possible amount of oil in the shortest length of time. Within 2 years after that field had reached its maximum of 367,000 barrels per day it was producing only 40,000 barrels of oil and over 1,000,000 barrels of water which had to be disposed of at considerable expense.

That great field has produced to date over 160 million barrels of oil, but it is estimated that 75 million barrels of oil were permanently lost through the hasty and reckless manner of production which brought the water into the pay horizon and dissipated the oil.

RUSSELL B. BROWN, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

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The present administration, recognizing the possibilities in the early recovery of the petroleum industry, and realizing the needless demoralization of that industry which now exists, invited a group of leaders in the petroleum industry to confer in Washington the latter part of March, with a view of proposing a program for Federal action. Wirt Franklin, president of the Independent Petroleum Association of America, under permission of the Secretary of the Interior, convened a general meeting of representatives of the petroleum industry to meet simultaneously with those previously invited by Secretary Ickes. To this general meeting convened by Mr. Franklin, invitations were sent to all the various groups, organizations, and associations in the industry. Special care was taken to invite every shade of thought, in order that the fullest discussion might be possible. A third group, composed of governors of oil-producing States, or of their representatives, was invited to Washington at the same time by Secretary Ickes.

The result of the deliberations of these three bodies, which joined together in a Committee of Fifteen, are well known. They proposed an immediate shut-down of flush pools; Presidential recommendation of conservation statutes in oil States now without adequate laws; prohibition of interstate commerce in illegally produced petroleum; enforcement of gasoline and pipe-line taxes, and a recommendation that the President submit to Congress a request for emergency legislation, authorizing his appointment of a personal representative to cooperate with State authorities in carrying out a program to meet the existing emergency. The committee's report set forth, as possible assistance which might be given by the Federal Government, a comprehensive study of the petroleum situation, an adequate competitive tariff on foreign petroleum and its products, elimination of the Federal gasoline tax and pipe-line tax, delayed drilling on public lands, limitation of imports to the average of the last half of 1932, and continuation of the Federal Oil Conservation Board as an advisory body. The committee proposed that the oil-producing States might aid in recovery from the present emergency by enacting such adequate State laws as might be necessary, issuing and strictly enforcing valid orders, equitably allocating production between pools, limiting production, reaching an agreement to allocate the total market demand between the producing States, and encouraging permissive unit operation.

Among other suggestions it was proposed the petroleum industry might aid by refraining from producing oil unlawfully, by promoting permissive unit operation, by avoiding excessive storage withdrawals, by limiting drilling to the absolute minimum, and by limiting imports to the average of the last half of 1932.

These proposals were adopted by the three groups named. They represented compromises.

There were those who would have preferred to omit some portions of these recommendations. There were those who would have preferred to add other recommendations. It was agreed that this program was not ideal. It was also agreed, however, that the program was practical and would afford a prompt solution of the most serious phases of the existing emergency. There were those who did not agree. Some organized a separate conference in protest against some portions of these recommendations. They filed these protests with the President and with the Secretary of the Interior, and they are a matter of public record.

The President, at the conclusion of the conference, addressed a letter to the Governors of the various oil States, sending to each one a copy of the suggested program and stating that while he had no authority to declare a moratorium on oil production such as is proposed that "There seems to be a wide-spread feeling that an emergency exists in the oil industry calling for action, and it is hoped that the Governors of the States affected, after consultation with each other, will take action appropriate to meet it."

No action was taken by any of the States or by any of the Governors. Without concerted action by all the States, compliance with the Presidential suggestion by one State alone would not have solved the problem and there was no authority authorized to call together the Governors for immediate action. Furthermore, legislative action would have been required in many States. This action was not immediately possible.

The program as outlined, in many of its features, was made the basis of tentative drafts of possible legislation for presentation to Congress. Conferences were held between representatives of all sections of the petroleum industry and the Secretary of the Interior. Out of these proposals there came suggestions for many changes in the legislation proposed. Inevitably some groups, in spite of their adherence to the original program, suggested alterations which might be to their supposed advantage. The general unanimity, made the more marked by the organization of the minority opposition into a separate association, was soon broken. It became increasingly evident that the industry could not agree, and that such temporary agreements as might be reached would afford no sound basis for permanent solution of these problems.

Meanwhile the situation of the petroleum industry became still more desperate. Failures, bankruptcies, closing of wells, increasing unemployment of workers accompanied the practically unlimited production of petroleum in the State of Texas.

It seemed that this important industry was doomed to suicide. The peculiar nature of petroleum complicated this. Unrestrained production of one section stimulated overproduction in neighboring sections. The contagion spread until the whole structure of the industry seemed about to crash.

J. D. SANDEFER, JR., PRESIDENT OF THE WEST CENTRAL TEXAS OIL & GAS ASSOCIATION

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I appear before you as an independent oil operator of Texas and as president of the West Central Texas Oil & Gas Association, with a membership of 300. We do not have a representative of any major company or purchaser of oil in our association. This association covers 16 counties in west Texas with 8,127 wells averaging approximately three and one-half barrels per day.

I also represent the North Texas Oil & Gas Association, this being a similar association in north Texas, covering approximately eight counties and having 15,000 stripper wells, producing 50,000 barrels daily.

A great number of the wells in the above districts have been shut down at this time, due to the chaotic conditions which exist. We are unable to produce these small wells on the present price of oil, which is 25 cents per barrel. * * * As stated heretofore, most of the wells in our district produce salt water, and it is necessary to keep them in continuous operation or else oil-bearing strata will be overcome by the water and the wells definitely ruined. Therefore if this great natural resource is to be conserved in our section of Texas, it is necessary that we immediately have some relief, as we are unable to operate these wells at this time. This, of course, adds to our already heavy unemployment situation which is very acute.

W. SCOTT HAYWOOD, STATE SENATOR AND HONORARY CHAIRMAN AND VICE CHAIRMAN OF THE LOUISIANA TAX REFORM COMMISSION AND MEMBER OF THE OIL STATES ADVISORY COMMITTEE

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Recent developments in the petroleum industry compel me to suggest the importance of immediate Federal control to regulate production, refining, and transportation of petroleum and its products, and also to impose definite restrictions upon imports. Political manipulation without experience in the oil industry is, in Texas, playing into the hands of the purchasing companies; and if this is not checked by Federal control, it will exterminate the independent producers, refineries, and distributors, and will effect the monopolistic control of the entire industry by a few large companies.

I also wish to call to your attention the fact that since the East Texas field was brought in that millions of barrels of Texas cheap oil has been coming in competition with Louisiana oil and has brought about the abandonment of approximately 3,000 settled producing pumping wells.

SHERMAN HUNT, TYLER, TEX.

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Our wells in Louisiana and in Arkansas are now closed down. We are unable to continue their production because of the situation created by the unlimited production of oil in east Texas. We have been forced to discharge our employees in these two States, in spite of our dislike of adding still more to the large number of the unemployed. Our wells are not the only ones closed in these States. There are countless others who duplicate our experiences. We do not know whether our wells will ever have any value if we reopen them. We are afraid that salt water will have destroyed their future production. Even if that destruction is not total, the productive possibility of the wells will be greatly diminished and the cost of production will be equally increased because of their shut-down.

This, too, is the experience of countless other owners of wells of settled production.

V. S. WELCH, ARTESIA, N. MEX.

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New Mexico, having many oil fields of settled production which must be shut down and their future production utterly lost unless some Federal movement is inaugurated to prevent one or two States with new flush areas from completely ruining the American petroleum industry, will find in the Federal oil-control bill proposed as an amendment to the General Industries Act a positive lifesaver.

The welfare of the petroleum industry is essential to the prosperity of New Mexico. The control of our own industry, however, has passed out of the authority of this State and is now, at least temporarily, lodged in the Texas Railroad Commission, which is able to decree our complete ruin without any compensatory advantage being gained by Texas itself. The rights of New Mexico are utterly ignored, as are the rights of all other States with settled production. We have no recourse except through Congress. If the Congress of the United States should pass the Marland bill, giving to some Federal officer authority to equitably allot to the various oil-producing States their proper share in the market demand, this would be of incalculable value to thousands of people in New Mexico and would conserve for future generations those great deposits of petroleum which are being reached by our pumping wells, but which will be forever lost if these wells are shut down. It is impossible to continue production from these wells, however, if the flush fields of east Texas or of any other State are permitted to flood the market with oil at ruinous prices.

WILLIAM BELL, PRESIDENT OF THE ILLINOIS-INDIANA PETROLEUM ASSOCIATION

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The Illinois-Indiana Petroleum Association, of which I am president, urges the adoption of the Marland Federal oil-control bill as an amendment to the General Industries Recovery Act.

Over 15,000 stripper wells in southeast Illinois and southwest Indiana, located near the center of the population of the United States, are facing ruin unless Federal control of petroleum production can be established. We do not believe that any form of State control or production limitation by individual agreement can help us or similar wells scattered over the oil-producing States.

We have large reserves of valuable petroleum still in our sands. These reserves constitute a very large portion of the total known oil reserves of the Nation. If these wells close, this oil will be forever lost since it cannot be recovered by any method in use today.

These valuable fields are facing early extinction because petroleum prices today are far below the cost of production. Their closing will entail severe losses falling upon producers, royalty owners, labor, and the general public. The loss of an immense amount of petroleum which will be produced hereafter from these wells will ultimately mean an increased price paid by the consuming public for petroleum products.

MARVIN LEE, WICHITA, KANS.

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Kansas has endeavored to make effective corrective measures intended to prevent destruction of the State's natural resource values, and to promote development of one of her greatest assets. In May 1931 the ratable taking law of Kansas became operative under the Public Service Commission. This commission, with the cooperation of producers, adjusted flush production outlets in this State. While these efforts were of temporary value, their effect has been destroyed by the uncontrolled production elsewhere, which has demoralized the entire industry, taken the natural markets for Kansas oil, and involved either the actual or the threatened closing of many wells of settled production which should, under any rational program for the whole industry, provide the Nation with great quantities of petroleum for many years to come. Unless some measure is taken by Congress to meet this situation, all the efforts of the State of Kansas, its Legislature, its authorities, and of the oil industry within the State will have been made null and void.

Kansas has been doing the utmost within its power to provide an orderly development of the new areas in western Kansas. In no other State has a larger area of proven production been found without causing a rush of drilling. In no other State are so many fields shut in without market. Both the State and the industry have done everything in their power to prevent waste of this irreplaceable resource which is now being threatened because of the unwillingness of other States to exercise the same care in the adoption or in the enforcement of proper laws for conservation.

VII. COMMUNICATIONS URGING CONTROL OF PRODUCTION BY THE FEDERAL GOVERNMENT

1. Proposal from the Oil States Advisory Committee to the Federal Oil Conservation Board:

WASHINGTON, D. C., *April 9, 1931.*

To the Honorable RAY LYMAN WILBUR,
Chairman of the Federal Oil
Conservation Board, City.

HONORED SIR: We, the undersigned members of the Oil States Advisory Committee, duly appointed by the governors of the respective States, which we represent to consider the present dire conditions of chaos and distress existing in the oil industry and to make recommendations for the betterment of such conditions, having requested of the Honorable Federal Oil Conservation Commission a conference as of this date, hereby submit the following:

First. Stabilization of the production of crude oil is necessary to stability of public supply; to the elimination of a waste of an irreplaceable resource; to prevention of the threatened forced abandonment of hundreds of thousands of small wells throughout the oil-producing areas of the United States; to preservation of the independent oil-producing areas of the United States; to preservation of the independent oil operator as a competitive force, thereby avoiding the creation of monopoly; and to the prevention of loss of many millions of dollars in tax revenues to the various states and to the nation.

Second. No individual oil-producing state, by its own laws, can adequately protect the national interests against such conditions of overproduction, attendant waste, and resultant demoralization of a great industry as now exists unless the conservation efforts of the large producing states shall be coordinated. Otherwise curtailment efforts within one state may be at any time automatically offset and nullified by increased flush production in the fields of another state, or by unjustified increases in importations, to the great damage of the areas of old and settled production throughout the country.

Third. Through bitter experience the various oil-producing states have been forced to the realization that the conservation authorities of each state must give due consideration to the general situation in the oil industry throughout the United States. With such consideration duly given, the stabilization of the production of crude oil within any state is purely a problem for solution by that state and the industry therein, with such cooperation and advice as may be rendered by interstate advisory committees and with such aid and assistance as the federal government may be able to give. Limitations on unnecessary drilling, conservation of gas energy, encouragement of unitization of development, ratable takings of oil among producers within a given field, and equitable apportionment of outlet as between the various fields should be the objectives of the various state laws, and for the better saving in the ground of oil and gas not immediately needed the state laws should be made more uniform and more effective in their enforcement.

Fourth. Coordinated restrictions to prevent wasteful overproduction by the major oil-producing states, with federal cooperation, may be furthered immediately by continuing for such time as may be necessary an advisory group representing the various states and by the conservation bodies within those states adopting, as a basis of regulation of production, the regional forecasts of supply and demand such as have just been made by the voluntary committee on economics of the Federal Oil Conservation Board, if and when same shall have been approved or modified by an interstate advisory committee.

Fifth. Equalization of the rate of foreign production, with due consideration for the proration efforts of the domestic producers, should be sought, not only to curtail imports but to safeguard the country's balance in exports, and we hereby fully endorse, and tender our thanks to your honorable Board for, the efforts put forth in procuring voluntary restrictions of imports into this country.

Sixth. The above objectives, i. e., sound and uniform conservation laws within the various states, coordination of their enforcement and effect with those of other states, balancing of their joint effect against foreign production, all under a system which will be stable for sufficiently long periods to enable economic production expenditures but flexible enough to meet changing conditions, may and should be placed on a permanent basis by means of an agreement between the oil-producing states, which will retain for each state its own administration of its own resources but will guarantee harmonious administration and cooperation through an interstate advisory board.

In view of the foregoing conditions, we hereby recommend:

1. That the Federal Oil Conservation Board continue its voluntary committee on economics to make periodic examinations into the status of the oil industry and formulate national and regional forecasts of supply and demand, and that such forecasts be given due consideration by the interstate committee and recommended, with any necessary modifications, to the respective state conservation bodies.

II. That the legislature of each oil-producing state be requested as rapidly as possible to authorize negotiation of an interstate agreement for coordination of conservation measures, any such agreement being subject to ratification by the states.

III. That pending the working out of such a compact an advisory committee, representing the several oil-producing states, continue to function as a liaison and fact-finding body, to present to the conservation authorities of the various states, at such times as may be deemed necessary, recommendations for more effective cooperation as between states.

Respectfully submitted.

Cicero I. Murray, Chairman, Oklahoma; Wm. H. Cooley, California; Robert R. Penn, Texas; W. Scott Heywood, Louisiana; Van S. Welch, New Mexico; Alfred M. Landon, Kansas; Carl M. Cox, Wyoming; I. C. Grimm, Ohio; Warwick M. Downing, Colorado.

2. Telegrams and letters from Governors of oil-producing States urging Federal control (printed in report of Hearings on the National Industrial Recovery Act before the Senate Committee on Finance, 73rd Cong., First Sess. (S. 1712, H. R. 5755)):

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On May 12, Governor Landon, of Kansas, wired as follows to the President:

"In re oil industry it appears that at least one major company (and it is expected that some others will do likewise) with large amount of empty storage is planning to largely increase its purchases. This will increase outlet and production allowable of that company's own production and also allowable of any other integrated company on the production in any pool or pools that might be affected. It will also force all independent producers to sell their increased allowable in order to protect their leases from drainage, thus giving such larger companies with their own pipe lines and empty storage a supply of oil at prices much lower than cost of production. This oil will then go into storage and later when conditions are stabilized it will be withdrawn from storage and purchases of currently produced crude will be correspondingly reduced. In other words, their future requirements will be anticipated on the present ruinous price basis. Time therefore becomes the essence, because if this condition is permitted to continue each day that passes will see just that much more of the below-cost oil go into this empty storage. The small independent producer is helpless. He needs money even if it means a conversion of his capital at a loss and he has no storage of his own and in any event must protect his leases from drainage by producing his allowable amount. Therefore express the hope that, not only for the general pressing reasons which are familiar to you but for this added special one which has just developed, proper legislation be expedited, and I proffer any aid or assistance I may be able to render.

"ALF. M. LANDON,"

COMMONWEALTH OF PENNSYLVANIA,
GOVERNOR'S OFFICE,
Harrisburg, April 7, 1933.

The PRESIDENT,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: Many thanks for your letter of April 1. I have given it careful consideration and now desire to express my strong approval of those parts of the report of the committee of fifteen which you approve, including in particular paragraphs A–3 and A–4 of the communication of March 29 addressed to the Secretary of the Interior by a committee representing the governors of the oil-producing States, the independent oil and gas associations, and the major oil- and gas-producing and importing companies.

In addition, I desire to raise the question whether an emergency as he deems necessary in the limitation of daily production to present requirements; in the limitation of the amount drawn from storage, based on last year's withdrawals; and in the limitation of imports (possibly the fixing of prices for the different grades of oil), and in forming a board with governmental authority to carry out this plan.

I am informed that there are important bodies of opinion among oil men in Pennsylvania in support of the foregoing suggestions.

As with oil, so with coal. I am vigorously of opinion that strong executive measures are absolutely necessary before either industry can hope for a return to prosperous times.

Sincerely yours,

GIFFORD PINCHOT.

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AUSTIN, TEX., *May 25, 1933.*

HON. HAROLD L. ICKES,
Secretary of the Interior:

Replying to your letter of May 22, beg to advise that bill H. R. 5695 by Marland meets with my approval, and I think its early passage is demanded to stop the illegal overproduction of oil in Texas and perhaps elsewhere. We have a deplorable condition in Texas, and from reliable information it appears that the production of oil in violation of our proration laws exceeds the amount permitted by our proration laws. In my opinion, prompt action by the Federal Government is the only effective remedy of this condition which is resulting in [illegible] natural resource and at the same time an inexcusable loss in taxes to the State and the royalty owners. Assuring you of my willingness to cooperate with you to the fullest extent to bring about needed relief, I am respectfully yours,

MIRIAM A. FERGUSON,
Governor of Texas.

FRANKFORT, KY., *May 13, 1933.*

Hon. FRANKLIN D. ROOSEVELT,
Washington, D. C.

Because of excessive and uncontrolled production of crude oil from flush wells in Texas resulting in unprecedented low prices of crude oil with which the thousands of small wells in Kentucky cannot compete, our local oil industry is demoralized and threatened with complete prostration. I earnestly request that you give the support of your administration to the measure recently prepared by a committee representing the Governors of Kansas, Oklahoma, and Pennsylvania, whereby the Secretary of the Interior is given dictatorial powers over the oil industry. The oil men of Kentucky believe that this particular measure is preferable to any other that has been proposed and understand it has the full support of the Secretary of the Interior.

RUBY LAFFOON,
Governor of Kentucky.

GOVERNOR'S CHAMBERS,
Sacramento, Calif., April 11, 1933.

The PRESIDENT OF THE UNITED STATES,
Washington, D. C.

DEAR MR. PRESIDENT: I have the great honor to acknowledge receipt and to thank you for your letter of April 1 and the oil committee recommendations which accompanied it. They were promptly sent to both houses of our legislature now in session, and a copy of my letter of transmittal is attached hereto.

My delayed acknowledgment is due to the fact that before writing you I desired to confer with the various factions of the oil industry in California, in the hope that inspired by national recommendation of the need for action, and by your desire to stabilize the industry, the differences which have heretofore existed in California might happily be compromised. I deeply regret that I cannot assure you of my success.

The dissenters are made up of a small group representing not more than 5 percent of the production in the State. They have persistently refused to subscribe to the plan of voluntary curtailment in this State, which with their cooperation would now be adequate to meet the situation here without statutory enactment. The minority report recently filed in Washington is their statement.

Two years ago our legislature passed, and I signed, a bill introduced by Senator William Sharkey, designed to control the production of crude oil. This control was lodged in a board to be elected by the oil producers. A small group of producers were dissatisfied with the bill and opposed its passage, stating that they would resist any regulatory legislation. The referendum was invoked, and a public campaign followed in which the charge was made that the ratification of this measure by the people would result in monopolistic control of the oil industry by the major companies, and in 30-cent gasoline, which would be a higher price than that paid during the war period.

I have never thought the opponents of the Sharkey bill really believed either of these statements to be correct, but those unable to acquaint themselves with the facts undoubtedly accepted the statements as true, and the bill was defeated 4 to 1.

Please be assured of my sincere desire to collaborate with you in a national plan of oil proration, and it is my earnest hope that the California Legislature will seriously consider the recommendations of the national committee now before it. With personal regards to you,

Respectfully and sincerely yours,

JAMES ROLPH, JR.,
Governor of California.

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OKLAHOMA CITY, OKLA., *May 3, 1933.*

The PRESIDENT,
The White House.

The undersigned Governors of the States of Oklahoma and Kansas make reference to your letter of March 28 addressed to us. We have just met in conference, the subject matter of that conference being your letter and the present demoralized condition of the petroleum industry. We have reached the following conclusions and make the following suggestions:

First. We are of the opinion that aid must be forthcoming from the Federal Government, this to take the form of an appropriate act of Congress which has as its basic object the balancing of the supply and demand and the fair apportionment of such demand as may exist for crude oil among not only the various producing States but also among the various pools therein. We have before us copies of a proposed law which has been presented to the Secretary of the Interior and which press dispatches state he has transmitted to you for examination without discussing either legal or a number of detail features of that proposed law. We state that we generally are in accord with its apparent objectives. We emphasize the fact that our States have particularly suffered because of the lack of control over allocations of purchases which in turn, among other reasons, result from a failure to properly limit imports.

We believe that fair and proper legislation should further provide in substance for a limitation of imports to an amount not exceeding the average daily imports for the last 6 months of the calendar year 1932, which was the unanimous recommendations of the committee of 15, composed of representatives of governors, major companies, and independents at the Washington conference on March 27 last. The Governor of Kansas has appointed as his representatives:

E. B. Shawver, president Producers and Land Owners' Association of Kansas.

Carl Weiner, president Stripper Oil Well Association.

Ralph J. Pryor, chairman State Oil Advisory Committee.

The Governor of Oklahoma has appointed as his representatives: Cicero I. Murray, Wirt Franklin, W. N. Davis.

We have given authority and instructions for those appointed to go to Washington as our representatives to solicit from the National Administration and Congress such aid and cooperation so necessary to accomplish these specific purposes mentioned above and generally do what they can with aid of your Excellency and Congress to restore prosperity to this great basic industry.

WM. H. MURRAY,
Governor of Oklahoma.
ALFRED M. LANDON,
Governor of Kansas.

EXECUTIVE DEPARTMENT,
Austin, Tex., May 5, 1933.

Hon. FRANKLIN D. ROOSEVELT,
President, Washington, D. C.

MY DEAR MR. ROOSEVELT: I today wired you as follows:

"The oil industry in Texas is still in a very confused and desperate condition. The illegal production of oil perhaps approximates the legal production of oil. Known violators of our proration laws appear to have the confidence of our railroad commission, which under its powers is permitting an overproduction of oil amounting to 400,000 barrels daily. Lack of power of the State to control interstate shipments and the importation of foreign oil, coupled with the failure of our railroad commission to control the situation, makes it doubtful whether the oil situation in Texas and Oklahoma and other oil-producing States can be successfully controlled by State jurisdiction.

"Our situation in Texas grows worse every day, and the people, especially in east Texas, are becoming desperate; and while there has not yet been any serious outbreak, there is so much intemperate expression and ill-feeling in the minds of the people that we will not be surprised if a serious situation might develop any day. In view of this perilous condition, and the ruinous and ridiculous prices now being paid the producers, which are destroying the industry, I have decided to say to you that, in my opinion, the public service will be best conserved by the prompt passage of laws that will give to you authority to take charge of the oil industry as emergency legislation, to continue for at least 2 years, or until the present deplorable situation is relieved. I do not have in mind any particular verbiage, but I suggest the passage of legislation in the form and substance of the Capper bill or Ickes bill as mentioned in the dispatches. I had hoped that conditions might have improved to where the action here suggested might be unnecessary, but the failure of the legislature to give the executive department any power to act in the premises and the apparent indisposition of our railroad commission to act with any dispatch make it my duty to call the matter to your attention in the hope that your good offices might be enlisted in the rendering of an imperative service. You are at liberty to give this communication to the press, and a letter of even date will follow giving further facts", which I beg now to confirm. It appears that our petroleum industry in Texas as well as in other States is in a very chaotic condition. I had hoped that the situation might be composed and that respect for our proration laws would long before now have had the effect to bring about an orderly production of oil. It appears, though, that such is not to be the case under present conditions and arrangements.

The problem confronting us in Texas is that there is a silent war going on between those who want to produce oil illegally and those who want to comply with the law. Unfortunately, the violators of our proration laws have had too much encouragement from those in authority. The violators have construed their recognition as a license, as it were, to produce and they have produced many million barrels of oil in violation of law and without paying royalty to the owners of the lease or taxes to the Government. Recently the railroad commission issued an order which permitted the production of nearly double the amount of oil required, and this soon resulted into an abnormal surplus which has almost destroyed the value of oil, and it is now selling legally and illegally in enormous quantity at 10 cents a barrel.

For some reason, best known to themselves, our railroad commission seem determined to authorize this ruinous production, and if such a policy is continued it will perpetuate further destruction of a valuable natural resource, and it will so intensify the feelings of the people as to incite them to exasperation which soon will result in a disregard for all law and violent conflicts will undoubtedly result.

It is my opinion that if something is not done quickly the entire industry in the United States will be destroyed and profitable operations of oil wells will be impossible. As we have such an enormous area in Texas that is known to be underlaid with petroleum, it can be readily seen how our excessive production will affect the price of the product. It is pressingly necessary for prompt enforcement of the proration laws in all parts of our State in order that we may escape the disastrous consequences of overproduction in the way of low prices.

As stated in my message, any State labors under considerable difficulty in dealing with oil shipped interstate and oil imported into the different States. These matters are peculiarly under the jurisdiction of the Federal Government, and the volume of business involved greatly overtaxes and expands the facilities of the State to cope with the situation. In addition, the magnitude of the undertaking is so great that the expense is quite burdensome to the State and it is difficult to provide the funds necessary to accomplish the necessary control of the industry.

It has been suggested that these matters might be fit subjects for compact agreement between the States. There is merit in the suggestion, but I think the hopes of relief from compact agreements between the States would be remote, and certainly they would come after years of litigation in the courts. The situation is now so pressing that some agency must be set up with iron-hand authority to get results. It is in view of these facts that I have come to the conclusion, reluctantly, that the only solution is for the matter to be placed under your jurisdiction and authority until the emergency is passed. I indeed regret that request for such action on the part of our State is necessary, but it appears that there is no other course.

With best wishes for your health and success and with continued esteem, I am

Faithfully yours,

——— ———,

Governor of Texas.

VIII. RAILROAD COMMISSION OF TEXAS, PRODUCTION AND STORAGE REPORT FOR THE EAST TEXAS FIELD, SEPTEMBER, 1934

This report takes into consideration all information regarding the following items:

(1) All outlets to the east Texas field:
  a. Pipe-line deliveries out of the field.
  b. Refineries runs to stills.
  c. Tank-car shipments out of field.
(2) Storage increase or decrease:
  a. Pipe-line Storage.
  b. Gathering System Storage.
  c. Lease Storage.
  d. Refinery Storage.
  e. Treating Plant Storage.
(3) Authorized oil in excess of the allowable:
  a. Pit oil and and tank bottoms.
  b. Shallow or salvage oil.
  c. Scrubber from Gasoline Plants.
(4) Amount of production allowed each day.
(5) Refinery situation.
(6) Refined products shipments by tank cars.
(7) Activities of violation department.
(8) Recapitulation.

1. *Outlets to the East Texas field.*—Crude oil from the East Texas field has three outlets.

(A) By twelve major pipe-line companies with one 6″ line, twelve 8″ lines, seven 10″ lines, and three 12″ lines, capable of moving approximately 1,000,000 barrels crude oil daily.

(B) By 79 Refineries, capable of running approximately 197,950 barrels crude oil daily to their stills.

(C) By four Railroads with 50 loading racks, capable of loading approximately 500 cars of crude oil or refined products daily.

(A) PIPE-LINE DELIVERIES

LEAVING THE EAST TEXAS FIELDS

(Main Lines)

Total Barrels	12, 710, 753
Daily Average	423, 692

(B) REFINERIES RUNS TO STILLS[1]

TO LOCAL REFINERIES

Total Barrels	2, 157, 261
Daily Average	71, 909

(C) TANK-CAR SHIPMENTS, CRUDE OILS

OUT OF EAST TEXAS FIELD

Number of Cars	170
Total Barrels	38, 080
Daily Average (Barrels)	1, 266

2. We are taking into consideration on this report five classes of storage: (a) Pipe-line Storage, (b) Gathering-System Storage, (c) Lease Storage, (d) Refinery Storage, (e) Treating-Plant Storage.

(*a*) PIPE-LINE STORAGE (BARRELS)

7 a. m. September 1, 1934	3, 895, 461
7 a. m. October 1, 1934	3, 592, 219
Storage Decrease	303, 242
Daily Average	10, 108

(*b*) GATHERING-SYSTEM STORAGE (BARRELS)

7 a. m. September 1, 1934	1, 574, 400
7 a. m. October 1, 1934	1, 195, 859
Storage Decrease	378, 541
Daily Average	12, 618

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[1] All refineries in the field are not reporting to the Commission but the " Runs to Stills " are arrived at by using the figures on the ones that are reporting and on the ones that are not reporting our scouts call on them each day and ascertain the amount run to stills.

(c) LEASE STORAGE (BARRELS) [2]

7 a. m. September 1, 1934	1,271,866
7 a. m. October 1, 1934	1,394,856
Storage Increase	122,990
Daily Average	7,433

(d) REFINERY STORAGE (BARRELS)

7 a. m. September 1, 1934	773,140
7 a. m. October 1, 1934	895,644
Storage Increase	122,504
Daily Average	4,083

(e) TREATING-PLANT STORAGE (BARRELS)

7 a. m. September 1, 1934	33,899
7 a. m. October 1, 1934	30,157
Storage Decrease	3,742
Daily Average	125

3. *Authorized oil in excess of the allowable*—(*a*) *Pit oil and tank bottoms.*—Permits were approved for tank bottom and pit oil during the month, for 14,162 barrels of oil to be run by reclamation plants. Waste Oil picked up from creeks, loading racks, and refinery waste amounted to 28,085 barrels. Of this amount approximately 56% was charged back to the lease allowables, leaving 23,698 barrels run which is in excess of the allowable.

(*b*) *Shallow wells or salvage oil.*—A total of 2,711 barrels of oil was run from the Mollie Fenn lease during the month.

(*c*) *Scrubber oil from gasoline plants.*—A total of 1,000 barrels of oil was run to pipe lines from various gasoline plants.

	Barrels
Pit oil and tank bottoms	23,698
Shallow wells or salvage oil	2,711
Scrubber oil	1,000
Grand total	27,409
Daily average	914

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[2] 155 Producers did not report and their storage is not included in this report.

4. On September 1, 1934, there were 14,392 wells producing in the East Texas field. During September there were 265 wells completed, making a total as of October 1, 1934, of 14,657 wells.

Actual allowable, September 1, 1934 to September 30, Inclusive

Date	Marginals	Wells	Potentials	Prorated hourly potential	Daily allowable
				Percent	
Sept. 1	1,407	14,396	10,526,681	4	425,006
Sept. 2	1,407	14,402	10,531,056	4	425,181
Sept. 3	1,409	14,407	10,534,021	4	425,306
Sept. 4	1,411	14,414	10,538,731	4	425,500
Sept. 5	1,412	14,420	10,543,196	4	525,581
Sept. 6	1,416	14,434	10,552,501	4	426,064
Sept. 7	1,416	14,446	10,561,226	4	426,413
Sept. 8	1,416	14,450	10,564,151	4	426,530
Sept. 9	1,417	14,456	10,568,211	4	426,696
Sept. 10	1,422	14,470	10,576,656	4	427,047
Sept. 11	1,426	14,484	10,585,211	4	427,401
Sept. 12	1,429	14,495	10,592,236	4	427,691
Sept. 13	1,431	14,505	10,598,941	4	427,964
Sept. 14	1,434	14,516	10,605,776	4	428,246
Sept. 15	1,435	14,524	10,611,711	4	428,486
Sept. 16	1,437	14,527	10,613,286	4	428,555
Sept. 17	1,437	14,539	10,622,626	4	428,928
Sept. 18	1,437	14,545	10,626,666	4	429,090
Sept. 19	1,440	14,559	10,636,701	4	429,500
Sept. 20	1,442	14,565	10,640,661	4	429,664
Sept. 21	1,443	14,574	10,647,751	4	429,950
Sept. 22	1,443	14,578	10,650,881	4	430,071
Sept. 23	1,445	14,583	10,653,666	4	430,192
Sept. 24	1,447	14,601	10,666,141	4	430,697
Sept. 25	1,449	14,612	10,673,971	4	431,050
Sept. 26	1,450	14,621	10,680,001	4	431,260
Sept. 27	1,452	14,632	10,687,936	4	431,583
Sept. 28	1,453	14,640	10,693,221	4	431,797
Sept. 29	1,453	14,648	10,699,281	4	432,039
Sept. 30	1,453	14,657	10,705,911	4	432,264
Total Allowable (Barrels)					12,855,852
Daily Average Barrels)					428,528

5. *Refinery situation.*—During the month of September there was a total of 80 refineries in the East Texas Field. During the month 64 of these plants operated, 16 of the total were shut down the entire month and 2 of them were under construction. Out of the total that operated, only 58 plants operated more than fifteen days during the month.

6. Refined products shipments by tank car.

Commodity	Number of cars, August	Number of cars, September
Gasoline	4, 844	4, 403
Fuel Oil	3, 212	2, 782
Tupped Crude	910	1, 315
Gas Oil	965	714
Kerosene	416	379
Distillate	727	1, 053
Naphtha	2	1
Residium	610	569
Casinghead Gasoline	522	526
Crude Tops	82	32
Total Number of Cars	12, 254	11, 774
Daily Average	395	392

7. Activity of the violations department during the month of September 1934—Refineries.—Thirty-six violation reports were forwarded to the Attorney General's Department for further legal action, charging 17 refineries with receiving untendered oil in contravention of the rules and regulations of the Railroad Commission and representing a total of 106 penalty days.

Thirty-five reports were forwarded to the Attorney General's Department charging 35 refineries with failure to submit E–H–2 reports, as required by the Rules and Regulations of the Railroad Commission, involving 1,050 penalty days.

(A summary of the above will show that during the month of September 1934 seventy-one (71) violation reports were forwarded to the Attorney General's Department for proper legal action, charging thirty-six (36) refining companies with infringement of the Rules and Regulations of the Railroad Commission and representing a total of 1,156 penalty days.)

Judge W. F. Robertson of the 126th District Court of Travis County, Texas, granted temporary restraining order against 29 refineries located in the East Texas field for having open earthen storage for oil at their refinery site in contravention of Rule No. 39 of the Railroad Commission of Texas entered in Oil and Gas Docket on April 3, 1934, stating that open-earthen storage for oil is hereafter prohibited except when the Commission grants special permission in order to meet an unforeseen emergency.

Operators.—Sixteen criminal violations were reported to the district attorneys of the counties wherein the violations took place charging various operators with overproduction, using a means and device to evade and prevent accurate measurement of oil (bypass), conveying oil into possession of another otherwise than from tanks, not burning a flare simultaneously with production, etc.

8. *Recapitulation*

	Barrels
Crude oil leaving field:	
Pipe Line Runs	12, 710, 753
Refinery Runs to Stills	2, 157, 261
Tank Car Shipments	38, 080
Total	14, 906, 094
August storage:	
Pipe Line (Decrease)	303, 242
Gathering System (Decrease)	378, 541
Lease (Increase)	122, 990
Refinery (Increase)	146, 311
Treating Plant (Decrease)	3, 742
Total Net Decrease	416, 224
Authorized oil run in excess of allowable:	
Pit Oil and Tank Bottoms	23, 698
Salvage Oil or Shallow Wells	1, 000
Scrubber Oil	2, 711
Total	27, 409
Total oil run	14, 462, 461
Total September allowable	12, 855, 852
September production over allowable	1, 606, 609
Average daily production over allowable	53, 554
Per well average daily production over allowable	3. 65

Railroad Commission of Texas,
Oil & Gas Division, Kilgore, Texas.
By D. W. Power, *Auditor.*

IX. CODE PROVISIONS AUTHORIZING LIMITATION OF PRODUCTION

The following codes, listed in the order of their approval, either directly provide for limitation of production upon a quota basis or authorize such limitation upon specified conditions or contingencies:

Lumber and Timber Products (Art. VIII).
Petroleum (Art. 111, Secs. 3–5).
Glass Container (Art. VI, Sched. A).
Cement (Art. VI).
Corrugated & Solid Fibre Shipping Container (Art. VII).
Atlantic Mackerel Fishing (Art. VIII, Title C, Sec. 1 (c)–(e)).
Copper (New Art. VII, 6 (12)(a). (See order approving code.)

The following codes, listed in the order of their approval, authorize limitation upon the hours of operation of machines or plants:

Cotton Textile (Art. III, 2).
Wool Textile (Art. IV).
Coat and Suit (Part I, Third).
Lace Manufacturing (Art. III).
Corset and Brassiere (Art. 4).
Men's Clothing (Art. IV).
Hosiery (Art. IV, 6–8).
Cast Iron Soil Pipe (Art. 6).
Wall Paper (Art. IV (b)).
Underwear and Allied Products (Part I, Art. IV; Part III).
Textile Bag (Art. III (b)).
Glass Container (Art. VII; Sched. "C")
Silk Textile (Art. III, 1).
Umbrella (Art. III, 2).
Handkerchief (Art. III, 2).
Throwing (Sec. II (d) 1).
Dress Manufacturing (Art. III, 4).

Canning and Packing Machinery (Art. III (e)).
Nottingham Lace Curtain (Art. III).
Novelty Draperies (Art. III, 4).
Funeral Supply (Art. III, 2).
Cotton Garment (Art. V).
Newsprint (Art. III, 1).
Upholstery and Drapery (Art. III, Sec. 4).
Cigar Container (Art. III, (d)).
Machined Waste (Art. III, 2).
Rubber Manufacturing (Chap. X, Art. IV-A, Sec. 1).
Hair Cloth (Art. III, 5).
Knitted Outerwear (Art. III, (d)).
Wax Paper (Art. III, 4).
Rayon and Silk Dyeing (Art. III, 5, 6).
Medium and Low Priced Jewelry (Sched. G, 2 (a)).
Velvet (Art. VIII).
Paper Stationery and Tablet (Art. III, 4).
Blouse and Skirt Manufacturing (Art. II, 5).
Robe and Allied Products (Art. III, 5).
Slit Fabrics (Art. III, 8).
Drapery and Upholstery Trimming (Art. III, 4).
Dental Laboratory (Art. III, Sec. 7).
Envelope Manufacturing (Art. VI).
Light Sewing (Art. III, 4; Div. 2, Art. III).
Wet Mop (Art. III, 3).
Textile Processing (Art. II, 4).
Advertising Display Installation (Art. III, 1).
Schiffli, Hand Machinery, etc. (Art. IV, 1 (b)).
Hat Manufacturing (Art. II, 5).
Shoulder Pad (Art. III, 8).
Laundry (Art. III, 4, 5).
Ready-made Furniture (Art. III, 3).
Cordage and Twine (Art. VI, 7).
Solid Braided Cord (Art. VI).

Narrow Fabrics (Art. III, 4).
Soft Fibre Manufacturing (Art. III, 4).
Celluloid Button, etc. (Art. III, 10).

X. THE METHOD OF DETERMINING THE CONSUMER DEMAND AND ALLOCATING IT AMONG THE STATES

District of Columbia,
City of Washington, ss:

Edward B. Swanson,* having been first duly sworn on oath deposes and says:

I am a resident of the city of Washington, in the District of Columbia, and am chief economist of the Petroleum Economics Division of the United States Bureau of Mines of the Department of Commerce. I graduated at the University of Washington in 1918, and thereafter for almost 2 years did graduate study in economics in the Robert S. Brookings Graduate School of Economics and Government in Washington, D. C. I have been engaged with the United States Bureau of Mines in work associated with the economic study of the petroleum industry for the past 10 years. Since the latter part of 1922 I have been directly in charge of the Petroleum Economics Division in the Bureau of Mines and for 2 years prior thereto I served as assistant chief of the said division. The Petroleum Economics Division was established in 1925 upon the recommendation of the committee designated by the Secretary of Commerce to study the program of the Bureau of Mines at the time of its transfer from the De-

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*This affidavit was introduced in evidence by respondents at the trial before the District Court in the *Amazon* case (No. 260) but was not included in the record on appeal to the Circuit Court of Appeals. Counsel for petitioners in this case have stipulated with the respondents that this affidavit may be presented for consideration by this Court.

partment of the Interior to the Department of Commerce. It was made up of the petroleum unit of the Mineral Resources Division of the United States Geological Survey, dating back to 1882; the petroleum refinery statistics section of the Bureau of Mines, dating back to 1917; and the petroleum portion of Minerals Division of the Bureau of Foreign and Domestic Commerce. Its creation resulted from the consolidation in one unit of work hitherto done in three separate bureaus. Its purpose is to provide current economic data to those interested in the petroleum, natural gas, and allied industries. It prepares and distributes regular and special reports and, by correspondence and otherwise, furnishes information relating to reserves, production, transportation, stocks, consumption, prices, distribution, uses, and marketing of petroleum products and byproducts; refining, transportation and storage facilities; and the economic factors resulting in or influenced by current changes in utilization. This work is done with the view of serving public interest by assisting in coordinating production and manufacturing operations to demand, in promoting efficient distribution, and in assuring ample supplies of petroleum products. The division serves in a consulting capacity to other Government agencies with respect to problems related to oil and natural gas.

My connection with forecasting the amount of crude-oil production required to balance consumer demand began in 1931, when I served as chairman of a voluntary committee on petroleum economics which was designated by the Federal Oil Conservation Board to serve and estimate the approximate crude oil and gasoline supply and demand for the period from April 1, 1931, to September 30, 1931. The Federal Oil Conservation Board was designated by the President of the United States on December 19, 1924, and was composed of the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, and the Secretary of Commerce. Copy of the letter of the President constituting the Board is marked "Exhibit 1", is attached hereto and made a part hereof. I continued this work as chairman of the said voluntary committee until June 30, 1932. Although my connection with the said voluntary committee ceased at that time, it performed the same work to the close of some time during the year 1933.

The Petroleum Economics Division of the Bureau of Mines first estimated the monthly consumer demand for petroleum products in the United States and the production of crude oil required to balance the consumer demand for such petroleum products for the period from October 1 to November 30, 1933. A similar determination has been made by the said Division for the month of December 1933. This work has been done under my supervision as chief economist of the said Petroleum Economics Division.

The method employed in determining such production has been developed as the result of experience gained in the estimates or forecasts which have been made by the said Petroleum Economics Division and the said voluntary committee and the private agencies during approximately the past 3 years. The method of forecasting the gasoline demand has been developed in the United States Bureau of Mines as the result of a special study extending over a period of almost 2 years. Fundamental data employed in making the conclusions entering into such forecasts are the official records of the United States Bureau of Mines. The assembling and analyses of these fundamental data are conducted by members of the staff of the said Petroleum Economics Division, all of whom have had many years experience in assembling and working with information of this character. The work thus performed is done under my direct supervision, and that portion of it pertaining to the interregional movement of gasoline and crude oil, the analysis of trends in refinery operations, and the seasonal fluctuation of gasoline stocks, which result in a forecast of required crude-oil production among the several States is done by me personally.

The seasonal market demand for crude oil in the various producing States in the United States is determined by first ascertaining the total consumer requirements for the principal petroleum products in the United States and then working back to determine the amount of crude oil needed to satisfy this demand for the principal petroleum products and the sources from which it is necessary to obtain this supply. The various steps in this process are hereinafter described.

The consumer demand for petroleum products is determined primarily from a forecast of the probable demand for gasoline during the period for which required production of crude oil is being estimated. Experience has shown that if sufficient crude oil (when checked to meet fuel-oil requirements) is produced to satisfy the demand for gasoline, the demand for the other products of crude oil will be adequately supplied.

The probable domestic demand for gasoline is calculated by multiplying the number of motor vehicles in use by the unit consumption of gasoline per motor vehicle. The method employed in determining the number of motor vehicles which will be in use during the period for which the forecast is being made is based upon a review of new-car and total-car registrations during the period 1925 to 1932, inclusive, the cars in use at the beginning of any year being the total registrations during the year less new-car registrations made during the year. The number of cars to be scrapped during the period is calculated from data on registrations during the 13 years previous, using a formula to determine for the total cars placed in use during each of these years the percentage of which will be scrapped in each succeeding year. By the combination of such data for each of the years, cumulative data are available to show the number of cars of previous year's production which still are in use. The number of cars scrapped each year as determined by the use of the above formula is checked against actual scrapping as determined from car registrations. The formula is adjusted for present economic conditions. The monthly figures on cars in use are distributed on a percentage basis developed from previous experience in monthly fluctuations. From these data the probable number of cars in use during each month of the forecasting period is determined by adding the probable new-car registrations to the probable cars in use at the beginning of the period and subtracting therefrom the probable number of cars to be scrapped during the period.

The calculation on probable cars in use during the forecasting months of 1933 has been checked with actual data covering the first 9 months of the year and the error between the calculated figure and the actual total is twenty-three one hundredths of 1 percent.

The number of motor vehicles in use, determined as above described, is then multiplied by the unit consumption of gasoline per vehicle. This unit consumption figure is determined from data covering the period from 1925 to 1932, inclusive, by dividing the total gasoline consumption each month by the number of motor vehicles in use during the corresponding month and correcting the trend for unusual fluctuations. The calculation shows a straight line trend, deviations from which are in accordance with economic conditions. Such deviations are correlated with the index of business conditions.

The figure for unit consumption of gasoline per motor vehicle is computed on such a basis as will include all of the nonautomotive consumption of gasoline. In other words, the relationship between automotive and nonautomotive gasoline consumption during the past several years has been relatively constant and the method of determining unit consumption, consequently, results in the inclusion of the nonautomotive utilization of gasoline in the figure for unit consumption.

In general it may be said of present conditions that the number of motor vehicles in use is approximately 7 percent less than the number in use 1 year ago, whereas the unit consumption of gasoline per motor vehicle is slightly more than 7 percent higher than it was a year ago. The net result of offsetting the increase in gasoline consumption per motor vehicle against the decrease in the number of motor vehicles in use results in indicating a slight increase in total motor fuel or gasoline consumption.

The above calculations are made directly under my supervision by Mr. H. A. Breakey, a graduate of Denver University with the degrees of A. B. and M. A. and who has completed at the University of California, Berkeley, Calif., and American University, Washington, D. C., all of the work necessary for the granting of a Ph. D. degree with the exception of the completion of his thesis. In addition, Mr. Breakey was employed for 4½ years during the period 1916 to 1920 by oil companies operating in the Rocky Mountain district.

Through the multiplication of unit consumption per motor vehicle by the calculated number of motor vehicles which will be in use during the period covered by the forecast, there is determined the total quantity of gasoline which will be required for consumption within the United States. This figure is checked through an analysis of trends in domestic gasoline consumption in the territories served by the eight refining districts in the United States which have been employed by the Bureau of Mines in substantially the present form since the assembly and publication of petroleum refinery statistics was begun by the Bureau of Mines. The analysis of such trends is based upon gasoline tax returns during the period 1930 to 1933, to date, inclusive, the consumption in each district being expressed in terms of its percentage to the national consumption. Through the analysis of the relationship between gasoline consumption in each of the consuming territories, the trend in gasoline consumption in each of the areas is determined. These trends are utilized in checking the total figure as previously determined and also for the purpose of dividing the national consumption into the consumption for each of the districts.

Having thus determined the probable consumption of gasoline in each of the districts, there is then added to the figure for each district the probable export of gasoline from that district during the period. The total of these two sets of figures then represents the total gasoline demand, including domestic requirements and that needed for shipment to other countries and territories.

The total gasoline requirement for each district is then divided into that which will be manufactured at refineries located within the consuming territory and that which will be received from other refining districts. This division is based upon an analysis of trends in the interregional movement of gasoline over the period 1932 and 1933 to date. By making such a calculation for each district and consolidating the requirements thus determined for each producing district, there is determined the quantity of gasoline which should be supplied from each producing district in order to meet the demand in the territory normally served by that district. These figures for regional demands are then adjusted to meet the requirements of normal seasonal fluctuations in stocks of gasoline held at refineries and bulk terminal plants. Through the adjustment of the demand figure with the normal seasonal fluctuation of stocks, there is determined the quantity of gasoline which should be produced within each district, either at petroleum refineries or from such miscellaneous sources of motor fuel supply as the output of stabilized gasoline at natural gasoline plants or the admixture of benzol.

From the required production of gasoline in each district there is deducted the quantity which will be supplied through stabilized natural gasoline or the admixture of benzol, the remaining figure being the quantity of gasoline which will be required to be manufactured at petroleum refineries within each district. There is then deducted the quantity of natural gasoline which, it is calculated, will be blended with motor fuel produced from crude petroleum in each district. The quantity of natural gasoline is determined on the basis of the recorded operations in each district during the period 1930 to 1933 to date, inclusive. A deduction of the quantity of natural gasoline to be blended from the total gasoline to be manufactured at petroleum refineries in each district determines the quantity of gasoline which is to be manufactured from crude petroleum.

The experience of petroleum refineries during the period 1930 to 1933 to date, as to the relative output of crude petroleum from straight distillation and by cracking, is then reviewed to determine the probable recovery factor which should be employed during the period under consideration to determine the quantity of crude petroleum which necessarily must be refined in order to produce the quantity of gasoline which it has been determined will be required to be produced through the refining of crude petroleum. The application of this factor determines the quantity of crude petroleum which will be needed at refineries in each district.

Data as to the interstate movement of crude petroleum from producing areas to petroleum refineries during the period 1932 to 1933 to date are then reviewed to determine the trends in the establishment of trade channels with respect to the movement of crude petroleum from producing districts to refining districts. The relationships thus determined are then applied to the quantity of crude petroleum which will be required by petroleum refineries in each district and there is thus determined the quantity of crude petroleum which will be required from each producing area to supply the requirement for crude petroleum in each refining district. These calculations are consolidated and there is determined the required production of crude petroleum in order to meet the refining needs during the period under consideration. Data on the exportation of crude petroleum during the period 1932 to 1933 to date are then reviewed to determine the probable export of crude petroleum from each producing district. In a similar manner the records of each producing district are examined to determine the quantity of crude petroleum which will be consumed directly as fuel, burned in field operations, or lost in handling. The probable exports of crude petroleum, together with the probable amount which will be consumed directly as fuel or lost in each district, are then added to the requirements of each district for crude oil for refining. The total of these items thus gives the total crude-oil requirement for each producing district. The data employed are available in such form that these requirements are determined directly on the basis of producing States.

These figures then are finally checked in order to determine the effect of the resulting operations upon the available supply of fuel oil.

In reviewing the data available for the first 6 weeks of the 2-month period with respect to required production of crude oil to balance consumer demand for petroleum products during the period October–November 1933, in comparison with the estimate made by the Federal agency for that period, it has been calculated that the probable error between the actual consumer demand for petroleum products and that estimated will not exceed twenty-five one-hundredths of 1 percent.

The number of barrels of crude oil required to be produced in Texas during December 1933 to meet consumer demand for petroleum products for that month was estimated as follows: Through the calculation, whereby the probable number of motor vehicles in use during the month of December 1933 was multiplied by the unit consumption per motor vehicle, it was found that the domestic demand for gasoline during the month of December 1933 would be 28,242,000 barrels.

Through analysis of trends in regional consumption of gasoline, in each of the refining districts, it was determined that the demand for gasoline in Texas during December 1933 would represent 5.1 percent of the national consumption. The remainder of the national gasoline consumption during December 1933 was divided as follows: East coast 37.2; Appalachian, 4.4; Indiana, Illinois, Kentucky, Michigan, etc., 27.6; Rocky Mountain district, 2.4; and California, 12.6.

By multiplying the national demand of 28,242,000 barrels by the Texas percentage of 5.1, it was determined that gasoline consumption within the borders of Texas would amount to 1,440,000 barrels. In addition, through the study of recent trends in gasoline exports, it was calculated that gasoline shipments from Texas ports to foreign countries and territories during December 1933 would amount to 563,000 barrels. The addition of the probable exports and the relatively minor addition of 35,000 barrels of gasoline stocks to the figures of probable gasoline consumption within the State of Texas gives the figure of 2,038,000 barrels as the gasoline and motor-fuel requirement within the State of Texas during December 1933. A small portion of this, calculated at 113,000 barrels, will be supplied from stabilized gasoline and other miscellaneous sources of motor fuel. The net gasoline requirement within the State of Texas, determined by the subtraction of the miscellaneous supply from the total motor-fuel requirement, will amount to 1,925,000 barrels.

In addition to supplying the gasoline which will be consumed within its own borders, gasoline produced at refineries located in Texas is shipped to other areas which it provides a portion of the supply necessary to meet the gasoline demand in those areas. Through observance of trends in interregional gasoline movements, it was determined gasoline from Texas to refineries would supply 41.07 percent of the gasoline demand in the east coast region during December 1933. In addition to gasoline shipments to the east coast, gasoline from Texas refineries also is shipped northward into the district comprising Indiana, Illinois, and adjacent States. As part of the examination of interregional gasoline movements, it was determined that gasoline from Texas refineries would supply 13.67

percent of the gasoline demand in the Indiana-Illinois district. Through the application of these percentages to the calculated demand in each of the districts, it was determined that Texas refineries would ship 4,605,000 barrels to the east coast district, and 1,097,000 barrels to the Indiana-Illinois district during December 1933, or a total of 5,702,000 barrels to be shipped to other consuming districts in the United States.

The addition of the shipments of 5,702,000 barrels to the required production to the demand of 1,925,000 barrels within the State of Texas gives the total demand for Texas gasoline during December 1933 of 7,627,000 barrels.

Through an examination of refinery operations, it was calculated that of the 7,627,000 barrels, 431,000 barrels would consist of natural gasoline to be blended at refineries, and that 7,196,000 barrels of gasoline would be produced from crude petroleum. Through the same examination of refinery operations it was determined that the average recovery of gasoline from crude petroleum at Texas refineries during December 1933 would be 44 percent. By the application of this ratio to the required production of gasoline, it was determined that it would be necessary to refine 16,355,000 barrels of crude petroleum at Texas refineries during December 1933, it was determined that 61,000 barrels would be crude petroleum of foreign origin, and 16,294,000 barrels of crude petroleum of domestic origin.

In a similar manner, the required gasoline production in other districts was determined, and the quantity of crude petroleum necessary to provide for the manufacture of the required gasoline was determined. An examination of trends in the movement of crude petroleum from producing districts to refining districts was made, and as a result it was determined that Texas crude petroleum would supply 84.57 percent of the domestic crude oil required in the east coast district during December 1933, 0.26 percent of the domestic crude petroleum required in the Appalachian district, 3.13 percent of the domestic crude petroleum required in the Indiana-Illinois district, 3.55 percent of the domestic crude petroleum required in the Oklahoma-Kansas-Missouri district, and 60.53 percent of the domestic crude petroleum required in the Louisiana-Arkansas district. Applying these percentages to the quantity of crude petroleum required in each of the districts to which Texas crude petroleum is shipped, it was determined that 9,462,000 barrels of Texas crude petroleum would be shipped to the east coast district during December 1933 and that the total of shipments to the other districts listed would be 3,504,000 barrels.

In addition to these requirements for Texas crude petroleum, it was determined from examination of the records of exports and direct uses of petroleum that 801,000 barrels of Texas crude petroleum would be exported or burned directly as fuel during December 1933.

The summation of these items gives the total of 30,061,000 barrels of crude petroleum.

The examination of interregional movements of crude petroleum showed that crude petroleum from Oklahoma, Louisiana, and New Mexico is received within the State of Texas as part of the regular movement of crude petroleum in recognized trade channels. From this study, it was determined that the receipts of such crude petroleum would amount to 2,533,000 barrels. The subtraction of this item of 2,533,000 barrels from the total required, 30,061,000 barrels, gives the figure of 27,528,000 barrels as the required production of Texas crude petroleum in order to meet consumer demand for petroleum products during December 1933. That amount divided by 31 days in December gives 888,000 barrels daily.

A review of the natural and normal markets served by crude petroleum and petroleum products from each of the producing districts during the years 1931 to 1933 to date, indicates that the required production of Texas crude petroleum is equal to the domestic crude-oil requirements of Texas and east coast refineries. There are other interregional movements from and to Texas, but such movements tend to offset one another, with the result that a definite check as to the accuracy and reasonableness of the calculations may be made by a comparison of the required Texas crude-oil production with the domestic crude-oil requirements of Texas and east coast refineries. The domestic crude-oil requirements of Texas refineries, 16,294,000 barrels, plus the domestic crude-oil requirements of east coast refineries, 11,188,000 barrels, gives a total of 27,482,000 barrels. The required Texas crude-oil production, as calculated in the manner described during December 1933, amounts to 27,528,000 barrels, which provides the necessary check as to reasonableness and accuracy.

In the calculations, according to the method employed, the study of trends in regional distribution and refinery operations is continued currently so as to include most recent data available in order that such recent changes may be reflected in the factors employed in determining the influence of each on the interregional movement of crude petroleum, of gasoline, and to recovery of gasoline from crude petroleum. According to this method, the current changes are determined from the statistical data employed and are reflected in the results of the calculation.

Through the same method of calculation the production of crude oil required in other oil-producing States to meet consumer demand was estimated.

The following is a statement of the production, refining, consumption, etc., of petroleum and the refined products thereof, in the State of Texas, and the exports and shipments to other States of petroleum and refined products thereof from the State of Texas for the year 1932, such statement being based upon official figures and data in the Bureau of Mines which I believe to be accurate.

Supply and demand of petroleum and products thereof in Texas in 1932

[Figures in Barrels]

Supply within Texas:		
Production of crude oil		312,478,000
production of natural gasoline		8,836,000
Imports of crude oil[1]		945,000
Receipts of crude oil from other States[1]		23,353,000
Decrease in stocks of crude oil and refined products		15,137,000
Total demand for Texas oils		360,749,000
Demand within Texas:		
Gasoline		17,883,000
Lubricants (3 percent of above)		
Gas, oil, and fuel oils (1931):[2]		
Railroads	[3]17,144,000	

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[1] Imports and receipts from other States of refined products are negligible.

[2] No figures for gas, oil, and fuel-oil consumption in Texas for 1932 are available, but the 1932 figures will closely approximate the 1931 figures.

[3] Total deliveries to railroads, some portion of which, possibly 20 percent (3,428,000 barrels) is actually used outside of State.

Demand within Texas—Continued.		
Gas, oil, and fuels oils (1931)—Contd.		
Steamships	[4] 12,483,000	
Other	[5] 16,518,000	
		46,145,000
Other refined products		[6] 23,564,000
Crude as such plus losses		1,221,000
Refining losses		5,233,000
Total demand within Texas		94,582,000
Shipped from Texas:		
Exports:		
Crude	7,680,000	
Refined products	21,684,000	
		29,364,000
Deliveries to other States:		
Crude	143,170,000	
Refined products	93,633,000	
		236,803,000
Total shipped from Texas		266,167,000
Total demand for Texas oils		360,749,000

Summary

Oil used within Texas	94,582,000 barrels, or	26 percent
Oil shipped out of Texas	266,167,000 barrels, or	74 percent
Total	360,749,000 barrels, or	100 percent

To arrive at a fair figure for the percentage of Texas oil which is consumed outside of Texas as against the total consumption of Texas oil by consumers other than the oil industry, the following deductions from the figures for demand within Texas are reasonable and proper:

Oil delivered to ships at Texas ports for bunker fuel	12,483,000
Oil consumed by the oil industry in production and refining of petroleum	14,284,000
Refinery losses	5,233,000
Total deduction	32,000,000

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[4] Delivered at Texas ports for bunker fuel—all consumed outside of Texas.

[5] Of this amount 14,284,000 barrels are consumed in the production of, and refining of petroleum.

[6] Some minor refined products such as kerosene, asphalt, etc., included in this figure, leave Texas possibly as much as 15 percent of the total, which would amount to 3,535,000 barrels.

The fuel oil delivered to railroads within Texas and consumed outside of Texas (footnote 3 above) and the kerosene, asphalt, etc., which leave Texas (footnote 5 above) which together total almost 7,000,000 barrels are not deducted above because of uncertainty as to exact quantity.

With this modification of the foregoing tabulation "Supply and demand of petroleum and products thereof in Texas in 1932", the following summary is true:

Oil used within Texas by consumers other than the oil industry	62, 582, 000 barrels, or	18 percent
Texas oil used outside of Texas	278, 650, 000 barrels, or	82 percent
Total	341, 232, 000 barrels, or	100 percent

The monthly statistics of the Bureau of Mines assembled for the first 8 months of 1933 do not indicate that any material change has occurred during the present year in the percentages of oil used within Texas and Texas oil used outside of Texas.

EDWARD B. SWANSON.

Subscribed and sworn to before me this 9th day of December 1933.

[SEAL] FRANK JONES.

My commission expires January 10, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1934

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners
v.
ARCHIE D. RYAN, S. D. BENNETT, AND PHIL E. BAER

No. 135

PANAMA REFINING COMPANY ET AL., PETITIONERS
v.
A. D. RYAN, S. D. BENNETT, AND J. HOWARD
Marshall

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR RESPONDENT

This supplemental memorandum is filed in response to certain questions asked by members of the Court at the argument of the above cause.

I

The effect of the failure of section 9 (c) to require the President to state that he has made any finding prior to exercising the authority there conferred

The question was raised as to what defenses are open to a person who is prosecuted for having violated an order issued by the President under Section 9 (c). Respondents conceive that in such a prosecution the only defenses which would be open would be (1) that the section is unconstitutional and (2) that the defendant had not violated the President's order. If the prosecution was for violating a rule or regulation which had been prescribed under Section 10 (a) in order to carry out the purposes of Section 9 (c), the additional defense would be available that the rule or regulation was unconstitutional or not authorized by Section 10 (a).

The statute does not require the President to hold a hearing, to make formal findings, or to publish his reasons for exercising his discretion. In this respect Section 9c does not differ from the situation presented in *United States* v. *Grimand,* 220 U. S. 506, presently discussed.

At the argument, certain aspects of delegation of powers were discussed, and executive discretion was analyzed. Statutes were analyzed and the authority of the executive to determine (1) *whether* power was to be exercised, (2) *when* it was to be exercised, and (3) *what* was to be prescribed when it was exercised ~~were~~ was discussed. Mr. Justice Brandeis stated that Section 9 (c) authorized the

President to determine "whether" and "when" the statute should be put in operation. It was also suggested that the President must make certain "findings" prerequisite to exercise of authority, that these "findings" should be required by legislation delegating authority, and that these "findings" should be stated by the executive in exercising his authority.

As to *what* is to be done when delegated authority is exercised, it may be noted that in the ordinary statute delegating authority there is a discretion as to the substance of the executive mandate or prohibition. But Section 9 (c) allows no discretion as to what may be done, for the statute prescribes just what the President may do—he may only prohibit the transportation in interstate or foreign commerce of petroleum or its products produced or withdrawn from storage in excess of state law. Section 9 (c) is therefore much more strictly limited in this particular than the statutes sustained by this court in the decisions discussed presently.

Respondents submit that the validity or invalidity of a delegation of legislative power does not depend upon presence or absence of a statutory requirement that the President or other executive officer make a specified finding before exercising the authority delegated. A statute such as upheld in *United States* v. *Grimaud,* 220 U. S. 506, authorizing the Secretary of the Interior to make such rules and regulations as "will insure" certain specified objectives clearly does not require or contemplate that the Secretary shall make any finding prior to prescribing the rules and regulations authorized by the statute.

Section 9 (c) sets forth explicitly what may be prohibited. The only delegation under that Section is as to whether and when the prohibition shall be in effect. It would therefore seem that the only question of constitutionality arises from the failure expressly to state the standards to govern the President in making his determination in respect to the period the prohibition authorized by Congress shall be operative.

If Section 9 (c) had authorized the President to prohibit transportation of "hot oil" in interstate and foreign commerce whenever he shall deem such prohibition necessary to carry out the policy and purposes of Title I of the Act, the validity of this section would seem to be clear under the authorities (Respondent's brief, pp. 145–148). But the policy declared by Congress in Section 1 of Title I sets forth the standards which shall govern the administration and application of *all* the provisions of that title. It follows that the standards which govern the President's action under Section 9 (c) are found in the declaration of policy in Section 1, and that the test~~s~~ which the President must apply in determining his action under Section 9 (c) is whether it will in his judgment serve to effectuate these policies. The President is as much under a duty to conform his action to these standards as he would be if Section 9 (c) had expressly so stated.

Even if the foregoing interpretation of Section 9 (c) might otherwise be doubtful, it should be adopted if necessary to sustain the constitutionality of the section. In *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366, 407, this Court said:

> It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity.

Another possible interpretation of Section 9 (c) which, we believe, should be adopted if necessary to sustain constitutionality is that Congress therein declared it to be its policy to prohibit the interstate transportation of " hot oil " and imposed upon the President the duty to make that prohibition effective as soon as he could establish the necessary administrative machinery for the enforcement of the prohibition. A direct prohibition of transportation of "hot oil" prior to the organization of an administrative agency equipped to enforce it and prior to the formulation of rules and regulations for bringing this transportation under effective control would have resulted in confusion, violation of the law, and disrespect for its prohibition. It is true that Congress might have postponed the effective date of Section 9 (c) for a specified period, but Congress could not accurately predict how much time would be required to build up enforcement machinery. It therefore left to the determination of the President the time when the prohibition should go into effect, with an implied mandate to make the prohibition operative as promptly as consistent with efficient enforcement. In fact, the President took action under the section within 25 days after the enactment of the statute.

There remain to be considered the leading decisions of this Court upon the question of delegation of legislative power. *Field* v. *Clark,* 143 U. S. 649, held that Section 3 of the Act of October 1, 1890, c. 1244, was not an unconstitutional delegation of legislative power. The material portion of that section reads as follows:

> That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January, eighteen hundred and ninety-two, whenever, and so often as *the President shall be satisfied* that the government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States which, in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States, he *may deem*

> *to be reciprocally unequal and unreasonable,* he shall have the power, and it shall be his duty, to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, *for such time as he shall deem just.* (Italics ours.)

The circumstances under which the President might exercise his power under this Act were that he should be "satisfied" that the government of the country importing certain articles imposed duties on imports from the United States which the President "may deem" to be reciprocally unequal and unreasonable. Furthermore, the President was given the power to suspend the free list "for such time as he shall deem just." No finding of any kind was required, but the whole matter as to suspension was placed in the President's discretion.

In *Field* v. *Clark* the Court reviewed a number of prior statutes conferring wide legislative powers on the Executive. Prior to this review the Court said (p. 683):

> If we find that Congress has frequently, from the organization of the Government to the present time, conferred upon the President powers, with reference to trade and commerce, like those conferred by the third section of the act of October 1, 1890, that fact is entitled to great weight in determining the question before us.

Following its review of the statutes, the Court said (p. 691):

> * * *, the practical construction of the Constitution, as given by so many acts of Congress, and embracing almost the entire period of our national existence, should not be overruled, unless upon a conviction that such legislation was clearly incompatible with the supreme law of the land.

Among the statutes so reviewed and inferentially approved are the following:

The act of June 4, 1794, authorized the President, "whenever, in his opinion, the public safety shall so require", to lay an embargo on all ships and vessels in ports of the United States, and to continue or revoke this embargo "whenever he shall think proper."

The act of February 9, 1799, suspended commercial intercourse with France and its dependencies. The act provided that at any time after its passage "it shall be lawful" for the President, "if he shall deem it expedient and consistent with the interest of the United States", to limit and discontinue for the time being the restraints and prohibition of the act either with respect to the French Republic or any place belonging to that Republic "with which a commercial intercourse may safely be renewed"; and also to revoke such order "whenever, in his opinion, the interest of the United States shall require it."

The act of April 18, 1806, prohibited certain importations and the operation of this act was suspended by the act of December 19, 1806. The latter act authorized the President to suspend the operation of said act "if in his judgment the public interest should require it."

United States v. *Grimaud,* 220 U. S. 506, *supra,* sustained the validity of an indictment charging violation of rules and regulations prescribed by the Secretary of the Interior under the Act of April 23, 1897, c. 2, 30 Stat. 35, which provided:

> The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations, * * *; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use, and to preserve the forests thereon from destruction; and any violation of the provisions of the act or such rules and regulations shall be punished * * *.

Under this statute the Secretary could determine both when to make regulations and what should be in them, and there was no requirement of a preceding finding by the Secretary. The Secretary could determine when to make these regulations and what was to be in them, and the violation of these regulations was made a crime. There was no requirement that a finding be made. It is thus broader than Section 9 (c) which only leaves to the President the putting of the statute into effect. It is true that the forest act does contain a standard as to what shall be specified in the regulations for the preservation of the forests, but in Section 9 (c) there is no standard necessary for the guidance of the executive in formulating the substance of the regulations because the statute itself is explicit as to the substantive prohibition.

The supposed vice in Section 9 (c) is that the President can put the prohibition into effect at will without being required by the statute to make any express findings. The *substance* of the prohibition is exactly defined. The question is whether it is valid to permit the President to put a law into effect whenever he desires to do so, without making or publishing a formal finding.

In the very nature of the office of President he is to act, and it may properly be assumed that he will act, "in the public interest" or in accordance with the principles and the policy of the particular legislation under which he does act. To require, as a condition to the validity of a statute, that the President make a specified finding such as that he finds a particular requirement "in the public interest" or "necessary and proper" is a mere formality. It is submitted that the actual exercise of the President's power under Section 9 (c) is and necessarily involves [redacted] findings as fully as though he had stated some formal finding in the Executive Order putting 9 (c) into effect.

To summarize.—At the argument certain aspects of the question of delegation of powers were discussed. It was suggested that there were three phases: whether a thing should be done, when it should be done, and what should be done. As to what should be done, there is no question in this case. The statute strictly limits what the President can do.

As to whether a thing should be done, that is, the propriety of doing it, or, if that has been decided, when, that is, at what moment the power should be exercised, these are questions upon both of which the Congress might conceivably require (a) the making of findings by the Executive and (b) the stating of these findings.

Neither in the Grimaud case nor in the Embargo statutes is there any express requirement for the stating ~~making~~ of findings. If it be said that by the phrases in the public interest or insuring the protection of reservations there is a requirement that the Executive shall in his own mind, that is, as distinguished from expressly stating findings, make a finding, this is no different in substance than requiring him to act according to a standard. And if it be urged that the phrases in "the public interest" or "as will insure the objects of such reservations" is the setting up of a standard guiding the executive in the determination of whether the regulation or embargo shall go into effect, then it is to be answered that in the instant statute, if it be read as a whole and Section 9 (c) read with the policy of the Act, there is also a standard. The act can be reasonably thus read as a whole, because the declaration of policy necessarily applies to the whole statute. It must be read as a whole because if the statute can reasonably be construed in a manner making it constitutional, that construction must be taken.

II

The nature of the error made in amending the Code of Fair Competition for the Petroleum Industry in the Executive Order of September 13, 1933

At the oral argument, the impression seemed to be that a new Code of Fair Competition for the Petroleum Industry was promulgated on September 13, 1933, omitting the final paragraph of Section 4 of Article III of the original Code. The facts are these: On September 13, 1933, the President, by Executive Order (a certified copy of which has been filed in this Court), amended the Code of Fair Competition for the Petroleum Industry. In amending Section 4 of Article III, it was stated: "Article III, Section 4, is amended to read as follows:" and the first paragraph of Section 4 as it appeared in the original Code was restated in full with certain minor changes. The second paragraph of Article III, Section 4, was not restated in the Executive Order. Had the Executive Order read that "*the first paragraph* of Article III of Section 4 is amended", there would be no difficulty. But since the Executive Order on its face purports to restate the entire section, the Government has taken the position that the failure to restate the second paragraph of Section 4 is in effect an elimination of that paragraph from the Code.

Respondents believe that the error which arose through the amendment to Section 4, Article III, of the Petroleum Code by the Executive Order of September 13, 1933, was not altogether self-evident and that this circumstance partially accounts for the failure on the part of both parties to this cause to realize the effect of that amendment during the course of the proceedings in the lower courts. It is understandable that those concerned with administration of the code and the industry interpreted it as applying only to the *first paragraph* of Section 4, leaving the second paragraph intact and fully operative.

The Code provision here in question is involved in only No. 260. Mr. Saye, counsel for petitioners in No. 260, had written for and secured a certified copy of the Code and a certified copy of the Executive Order of September 13, 1933. (Certified copies of correspondence in which Mr. Saye requested this information and in which it was sent to him have been filed in this Court.)

In the course of preparation of the response to the application for writ of certiorari in this Court the documents were checked and the situation described ~~in the paragraph~~ above was discovered. Counsel for petitioners in both No. 135 and No. 260 were informed (by the Government) of the facts and this Court was informed in the Memorandum for the Respondents in No. 260.

Counsel for petitioners telegraphed this Court requesting that the Court take jurisdiction of the questions involved under the section of the Code omitted by the operation of the Executive Order of September 13, 1933. Counsel for the Government in its Memorandum in No. 260 presented the facts to this Court and in a Supplemental Memorandum suggested that there was "sufficient basis for jurisdiction in Equity in this case to restrain the enforcement of the second paragraph of Section 4, if invalid, despite the fact that it has been operative only since September 25, 1934." The Government also stated that:

> Should this Court conclude that it may not in this case consider and determine the validity of Section 4 of Article III of the Code, as amended by the Executive Order of September 25, 1934, respondents respectfully submit that the writ of certiorari, if granted, should be limited to the questions relating to Section 9 (c) of the National Industrial Recovery Act and the Regulations promulgated by the Secretary of the Interior in aid of the enforcement of that section, since the other questions in this case, relating to Section 4 of Article III of the Code, would be moot, in view of the fact that the Government cannot and does not intend to prosecute petitioners for producing prior to September 25, 1934, in excess of their State quotas.

III

Accessibility to public and publication of Codes of Fair Competition and Executive orders pertaining thereto

At the argument counsel was asked how "official" copies or "publications" of the codes might be obtained. Also, counsel for petitioners indicated that the exact state of the law was unknown.

The administrative agencies have not been so negligent as to omit proper distribution of all codes, amendments, and orders. This has been done in three general ways: (1) By setting up a regular procedure for the distribution of certified copies of all documents, (2) by publication of the codes and amendments in bound volumes (as well as separately), and (3) by the systematic distribution of all materials to members and groups of the particular industries involved and to trade journals and commercial law services. The following is an outline of the several methods whereby the codes, amendments, and orders are distributed or may be secured:

The President has delegated authority to administer codes of fair competition approved under Section 3 (a) of the Recovery Act to the National Industrial Recovery Board (succeeding the Administrator for Industrial Recovery), the Secretary of Agriculture, the Secretary of the Interior and the Federal Alcohol Control Administration. Anyone can upon request obtain from each of these agencies copies of the codes administered by it, copies of amendments to such codes and copies of all executive orders approving such codes or amendments. Certified copies of codes and code amendments can also be obtained from these agencies upon request. (Anyone desiring to receive all material in connection with the oil industry may upon request be placed upon the mailing list of the Petroleum Administrator to receive automatically all such documents and materials.) In addition, all codes under the jurisdiction of the Administrator for Industrial Recovery,[1] together with supplemental codes, amendments, and executive and administrative orders relating to these codes, have been published in sixteen bound volumes covering the period June 16, 1933, to September 15, 1934. There are 519 codes included in these sixteen volumes. Codes, amendments, and orders are also printed in at least two commercial services, Prentice-Hall and Commerce Clearing House (Federal Trade Regulations Service).

There seem to be no statutes governing the custody, attestation, and publication of Presidential proclamations and executive orders. As a matter of long practice, Presidential proclamations have been attested by the Secretary of State and have been published in the statutes at large, while executive orders of the President have not been so attested or published.

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[1] The Administrator for Industrial Recovery was succeeded by the National Industrial Recovery Board on September 27, 1934 (Executive Order No. 6859, September 27, 1934).

Both President Hoover and President Roosevelt have issued executive orders for the purpose of supplying the statutory omissions as to the custody, publication, and distribution of proclamations and executive orders. Executive Order No. 5220, dated November 8, 1929, signed by the former, reads in part as follows:

> For the purpose of securing uniformity of style and form, and for the better safeguarding of the texts of Proclamations and Executive Orders, it is directed that:
>
> * * * * *
>
> 6. The signed original of each Executive Order, as well as Proclamation, must be deposited with the Department of State, which is responsible for its custody and also for proof reading and distribution.

The foregoing order was superseded by Executive Order No. 5658, signed by President Hoover on June 24, 1931, the last paragraph of which reads:

> 3. The Department of State shall have custody of the signed originals of all Executive orders and proclamations and shall supervise their publication.

Executive Order No. 6247, signed by President Roosevelt on August 10, 1933, provides in part as follows:

> In order to avoid misunderstanding and confusion, to secure greater uniformity in

the form and style, and for the better safeguarding of the texts of Executive orders and proclamations, Executive Order No. 5658, dated June 24, 1931, is hereby rescinded and superseded by the following regulations:

*   *   *   *   *

5. The Department of State shall have custody of the signed originals of all Executive orders and proclamations and shall supervise their publication and distribution.

Executive Order No. 6497, dated December 15, 1933, amended Executive Order No. ~~6427~~ 6247 in a manner immaterial in the present connection.

Upon payment of a small fee anyone can obtain a certified copy of an executive order from the State Department. An uncertified printed copy can be obtained from the State Department without charge, and when the supply of printed copies in the State Department is exhausted, the person requesting such copy is referred to the Superintendent of Documents, who will furnish a copy upon a nominal payment.

Respectfully submitted.

✓ J. Crawford Biggs,
Solicitor General.

✓ Harold M. Stephens,
Assistant Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1934

7 CORRECTED COPY p 12 of Dissent

SUPREME COURT OF THE UNITED STATES.

Nos. 135 and 260.—October Term, 1934.

Panama Refining Company, et al.,
Petitioners,
135 *vs.*
A. D. Ryan, S. D. Bennett and J.
Howard Marshall.

Amazon Petroleum Corporation, Barney Cockburn, E. J. Boase, et al.,
Petitioners,
260 *vs.*
Archie D. Ryan, S. D. Bennett and
Phil E. Baer.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 7, 1935.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

On July 11, 1933, the President, by Executive Order, prohibited "the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State".[1] This action was based on Section

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[1] The full text of the Executive Order of July 11, 1933, is as follows:

"Executive Order

"*Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products thereof unlawfully produced or withdrawn from storage.*

"By virtue of the authority vested in me by the Act of Congress entitled 'An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes', approved June 16, 1933, (Public No. 67, 73d Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited.

"The White House,
July 11, 1933." Franklin D. Roosevelt."

9 (c) of Title I of the National Industrial Recovery Act of June 16, 1933. 48 Stat. 195, 200, 15 U. S. C. Tit. I, sec. 709 (c). That section provides:

"Sec. 9 . . .

"(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both".

On July 14, 1933, the President, by Executive Order, authorized the Secretary of the Interior to exercise all the powers vested in the President "for the purpose of enforcing Section 9 (c) of said act and said order" of July 11, 1933, "including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary".[2] That order was made under Section 10 (a) of the National Industrial Recovery Act, 48 Stat. 200, 15 U. S. C. 710 (a), authorizing the President "to prescribe such rules and regulations as may be necessary to carry out the purposes" of Title I of the National Industrial Recovery Act and providing that "any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both".

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[2] The Executive Order of July 14, 1933, is as follows:

"EXECUTIVE ORDER

"*Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products thereof unlawfully produced or withdrawn from storage.*

"By virtue of the authority vested in me by the Act of Congress entitled 'AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes', approved June 16, 1933, (Public No. 67, 73d Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9 (c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

"The White House, FRANKLIN D. ROOSEVELT."
July 14, 1933."

On July 15, 1933, the Secretary of the Interior issued regulations to carry out the President's orders of July 11 and 14, 1933. These regulations were amended by orders of July 25, 1933, and August 21, 1933, prior to the commencement of these suits. Regulation IV provided, in substance, that every producer of petroleum should file a monthly statement under oath, beginning August 15, 1933, with the Division of Investigations of the Department of the Interior giving information with respect to the residence and post-office address of the producer, the location of his producing properties and wells, the allowable production as prescribed by state authority, the amount of daily production, all deliveries of petroleum, and declaring that no part of the petroleum or products produced and shipped had been produced or withdrawn from storage in excess of the amount permitted by State authority. Regulation V required every purchaser, shipper (other than a producer), and refiner of petroleum, including processors, similarly to file a monthly statement under oath, giving information as to residence and post-office address, the place and date of receipt, the parties from whom and the amount of petroleum received and the amount held in storage, the disposition of the petroleum, particulars as to deliveries, and declaring, to the best of the affiant's information and belief, that none of the petroleum so handled had been produced or withdrawn from storage in excess of that allowed by state authority. Regulation VII provided that all persons embraced within the terms of Section 9 (c) of the Act, and the Executive orders and regulations issued thereunder, should keep "available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof".

On August 19, 1933, the President, by Executive Order, stating that his action was taken under Title I of the National Industrial Recovery Act, approved a "Code of Fair Competition for the Petroleum Industry".[3] By a further Executive Order of August 28, 1933, the President designated the Secretary of the Interior as Administrator, and the Department of the Interior as the Federal Agency, to exercise on behalf of the President all the powers vested in him under that Act and Code. Section 3 (f) of Title I of the National Industrial Recovery Act provides that when a code of fair competition has been approved or prescribed by the President under that title, "any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor, punishable by fine of not more than $500 for each offense, each day of said violation to be deemed a separate offense".

This "Petroleum Code" (in its original form and as officially printed) provided in Section 3 of Article III relating to "Production" for estimates of "required production of crude oil to balance consumer demand for petroleum products" to be made at intervals by the Federal Agency. This "required production" was to be "equitably allocated" among the several States. These estimates and allocations, when approved by the President, were to be deemed to be "the net reasonable market demand" and the allocations were to be recommended "as the operating schedules for the producing States and for the industry". By Section 4 of Article III, the subdivision, with respect to producing properties, of the production allocated to each State, was to be made within the State. The second paragraph of that section further provided:

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[3] The Executive Order of August 19, 1933, is as follows: -

"EXECUTIVE ORDER

"*Code of Fair Competition for the Petroleum Industry.*

"An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

"NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

FRANKLIN D. ROOSEVELT."

"Approval Recommended:
HUGH S. JOHNSON,
Administrator.

"The White House,
August 19, 1933."

> "If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this code".

By an Executive Order of September 13, 1933, modifying certain provisions of the Petroleum Code, this second paragraph of Section 4 of Article III was eliminated. It was reinstated by Executive Order of September 25, 1934.

These suits were brought in October, 1933.

In No. 135, the *Panama Refining Company,* as owner of an oil refining plant in Texas, and its co-plaintiff, a producer having oil and gas leases in Texas, sued to restrain the defendants, who were federal officials, from enforcing Regulations IV, V and VII prescribed by the Secretary of the Interior under Section 9 (c) of the National Industrial Recovery Act. Plaintiffs attacked the validity of Section 9 (c) as an unconstitutional delegation to the President of legislative power and as transcending the authority of the Congress under the commerce clause. The regulations, and the attempts to enforce them by coming upon the properties of the plaintiffs, gauging their tanks, digging up pipe lines, and otherwise, were also assailed under the Fourth and Fifth Amendments of the Constitution.

In No. 260, the *Amazon Petroleum Corporation,* and its co-plaintiffs, all being oil producers in Texas and owning separate properties, sued to enjoin the Railroad Commission of that State, its members and other state officers, and the other defendants who were federal officials, from enforcing the state and federal restrictions upon the production and disposition of oil. The bill alleged that the legislation of the State and the orders of its commission in curtailing production violated the Fourteenth Amendment of the Federal Constitution. As to the federal requirements, the bill not only attacked Section 9 (c) of the National Industrial Recovery Act, and the regulations of the Secretary of the Interior thereunder, upon substantially the same grounds as those set forth in the bill of the *Panama Refining Company,* but also challenged the validity of provisions of the Petroleum Code. While a number of these provisions were set out in the bill, the contest on the trial related to the limitation of production through the allocation of quotas pursuant to Section 4 of Article III of the Code.

As the case involved the constitutional validity of orders of the state commission and an interlocutory injunction was sought, a court of three judges was convened under Section 266 of the Judicial Code (28 U. S. C. 380). That court decided that the cause of action against the federal officials was not one within Section 266 but was for the consideration of the District Judge alone. The parties agreed that the causes of action should be severed and that each cause should be submitted to the tribunal having jurisdiction of it. Hearing was had both on the applications for interlocutory injunction and upon the merits. The court of three judges, sustaining the state orders, denied injunction and dismissed the bill as against the state authorities. 5 F. Supp. 633, 634, 639.

In both cases against the federal officials, that of the *Panama Refining Company* and that of the *Amazon Petroleum Corporation,* heard by the District Judge, a permanent injunction was granted. 5 F. Supp. 639. In the case of the *Amazon Petroleum Corporation,* the court specifically enjoined the defendants from enforcing Section 4 of Article III of the Petroleum Code, both plaintiffs and defendants, and the court, being unaware of the amendment of September 13, 1933.

The Circuit Court of Appeals reversed the decrees against the federal officials and directed that the bills be dismissed. 71 F. (2d) 1, 8. The cases come here on writs of certiorari granted on October 8, 1934.

First. The controversy with respect to the provision of Section 4 of Article III of the Petroleum Code was initiated and proceeded in the courts below upon a false assumption. That assumption was that this section still contained the paragraph (eliminated by the Executive Order of September 13, 1933) by which production in excess of assigned quotas was made an unfair practice and a violation of the Code. Whatever the cause of the failure to give appropriate public notice of the change in the section, with the result that the persons affected, the prosecuting authorities, and the courts, were alike ignorant of the alteration, the fact is that the attack in this respect was upon a provision which did not exist. The Government's announcement that, by reason of the elimination of this paragraph, the Government "cannot, and therefore it does not intend to, prosecute petitioners or other producers of oil in Texas, criminally or otherwise, for exceeding, at any time prior to September 25, 1934, the quotas of production assigned to them under the laws of Texas", but that if "petitioners, or other producers, produce in excess of such quotas after September 25, 1934, the Government intends to prosecute them", cannot avail to import into the present case the amended provision of that date.[4] The case is not one where a subsequent law is applicable to a pending suit and controls its disposition.[5] When this suit was brought, and when it was heard, there was no cause of action for the injunction sought with respect to the provision of Section 4 of Article III of the Code; as to that, there was no basis for real controversy. See *California* v. *San Pablo,* 149 U. S. 308, 314; *United States* v. *Alaska Steamship Co.,* 253 U. S. 113, 116; *Barker Co.* v. *Painters' Union,* 281 U. S. 462. If the Government undertakes to enforce the new provision, the petitioners, as well as others, will have an opportunity to present their grievance, which can then be considered, as it should be, in the light of the facts as they will then appear.

For this reason, we pass to the other questions presented and we express no opinion as to the interpretation or validity of the provisions of the Petroleum Code.

Second. Regulations IV, V and VII, issued by the Secretary of the Interior prior to these suits, have since been amended. But the amended regulations continue substantially the earlier requirements, and expand them. They present the same constitutional questions, and the cases as to these are not moot. *Southern Pacific Company* v. *Interstate Commerce Commission,* 219 U. S. 433, 452; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, 514-516; *McGrain* v. *Daugherty,* 273 U. S. 135, 181, 182.

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[4] The Government states that although the second paragraph of Section 4 of Article III was a part of the Code for a short period prior to September 13, 1933, no legal basis exists for prosecution for production in Texas during that period.

[5] See United States *v.* The Schooner Peggy, 1 Cranch. 103, 109, 110; Dinsmore *v.* Southern Express Co., 183 U. S. 115, 120; Crozier *v.* Krupp, 224 U. S. 290, 302; Gulf, Colorado & Santa Fe Rwy. Co. *v.* Dennis, 224 U. S. 503, 507; Watts *v.* Unione Austriaca, 248 U. S. 9, 21; Duplex Printing Press Co. *v.* Deering, 254 U. S. 443, 464; American Foundries *v.* Tri-City Council, 257 U. S. 184, 201; Texas Company *v.* Brown, 258 U. S. 466, 474.

The original regulations of July 15, 1933, as amended July 25, 1933, and August 21, 1933, were issued to enforce the Executive Orders of July 11 and July 14, 1933. The Executive Order of July 11, 1933, was made under Section 9 (c) of the National Industrial Recovery Act, and the Executive Order of July 14, 1933, under Section 10 (a) of that Act, authorizing the Secretary of the Interior to promulgate regulations, was for the purpose of enforcing Section 9 (c) and the Executive Order of July 11, 1933. The amended regulations have been issued for the same purpose. The fundamental question as to these regulations thus turns upon the validity of Section 9 (c) and the executive orders to carry it out.

Third. The statute provides that any violation of any order of the President issued under Section 9 (c) shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both. We think that these penalties would attach to each violation, and in this view the plaintiffs were entitled to invoke the equitable jurisdiction to restrain enforcement, if the statute and the executive orders were found to be invalid. *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 620, 621; *Terrace* v. *Thompson,* 263 U. S. 197, 214-216; *Hygrade Provision Company* v. *Sherman,* 266 U. S. 497, 499, 500.

Fourth. Section 9 (c) is assailed upon the ground that it is an unconstitutional delegation of legislative power. The section purports to authorize the President to pass a prohibitory law. The subject to which this authority relates is defined. It is the transportation in interstate and foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount permitted by state authority. Assuming for the present purpose, without deciding, that the Congress has power to interdict the transportation of that excess in interstate and foreign commerce, the question whether that transportation shall be prohibited by law is obviously one of legislative policy. Accordingly, we look to the statute to see whether the Congress has declared a policy with respect to that subject; whether the Congress has set up a standard for the President's action;

whether the Congress has required any finding by the President in the exercise of the authority to enact the prohibition.

Section 9 (c) is brief and unambiguous. It does not attempt to control the production of petroleum and petroleum products within a State. It does not seek to lay down rules for the guidance of state legislatures or state officers. It leaves to the States and to their constituted authorities the determination of what production shall be permitted. It does not qualify the President's authority by reference to the basis, or extent, of the State's limitation of production. Section 9 (c) does not state whether, or in what circumstances or under what conditions, the President is to prohibit the transportation of the amount of petroleum or petroleum products produced in excess of the State's permission. It establishes no criterion to govern the President's course. It does not require any finding by the President as a condition of his action. The Congress in Section 9 (c) thus declares no policy as to the transportation of the excess production. So far as this section is concerned, it gives to the President an unlimited authority to determine the policy and to lay down the prohibition, or not to lay it down, as he may see fit. And disobedience to his order is made a crime punishable by fine and imprisonment.

We examine the context to ascertain if it furnishes a declaration of policy or a standard of action, which can be deemed to relate to the subject of Section 9 (c) and thus to imply what is not there expressed. It is important to note that Section 9 is headed "Oil Regulation",—that is, Section 9 is the part of the National Industrial Recovery Act which particularly deals with that subject matter. But the other provisions of Section 9 afford no ground for implying a limitation of the broad grant of authority in Section 9 (c). Thus Section 9 (a) authorizes the President to initiate before the Interstate Commerce Commission "proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines", and the Interstate Commerce Commission is to grant preference "to the hearings and determination of such cases." Section 9 (b) authorizes the President to institute proceedings "to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly." It will be observed that each of these provisions contains restrictive clauses as to their respective subjects. Neither relates to the subject of Section 9 (c).

We turn to the other provisions of Title I of the Act. The first section is a "declaration of policy".[6] It declares that a national emergency exists "which is productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects public welfare, and undermines the standards of living of the American people." It is declared to be the policy of Congress "to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof"; "to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups"; "to induce and maintain united action of labor and management under adequate governmental sanctions and supervision"; "to eliminate unfair competition practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources".

This general outline of policy contains nothing as to the circumstances or conditions in which transportation of petroleum or petroleum products should be prohibited,—nothing as to the policy of prohibiting, or not prohibiting, the transportation of production exceeding what the States allow. The general policy declared is "to remove obstructions to the free flow of interstate and foreign commerce". As to production, the section lays down no policy of limitation. It favors the fullest possible utilization of the present productive capacity of industries. It speaks, parenthetically, of a possible temporary restriction of production, but of what, or in what circumstances, it gives no suggestion. The section also speaks in general terms of the conservation of natural resources but it prescribes no policy for the achievement of that end. It is manifest that this broad outline is simply an introduction of the Act, leaving the legislative policy as to particular subjects to be declared and defined, if at all, by the subsequent sections.

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[6] The text of Section 1 is as follows:

"Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources".

It is no answer to insist that deleterious consequences follow the transportation of "hot oil",—oil exceeding state allowances. The Congress did not prohibit that transportation. The Congress did not undertake to say that the transportation of "hot oil" was injurious. The Congress did not say that transportation of that oil was "unfair competition". The Congress did not declare in what circumstances that transportation should be forbidden, or require the President to make any determination as to any facts or circumstances. Among the numerous and diverse objectives broadly stated, the President was not required to choose. The President was not required to ascertain and proclaim the conditions prevailing in the industry which made the prohibition necessary. The Congress left the matter to the President without standard or rule, to be dealt with as he pleased. The effort by ingenious and diligent construction to supply a criterion still permits such a breadth of authorized action as essentially to commit to the President the functions of a legislature rather than those of an executive or administrative officer executing a declared legislative policy. We find nothing in Section 1 which limits or controls the authority conferred by Section 9 (c).

We pass to the other sections of the Act. Section 2 relates to administrative agencies which may be constituted. Section 3 provides for the approval by the President of "codes" for trades or industries. These are to be codes of "fair competition" and the authority is based upon certain express conditions which require findings by the President. Action under Section 9(c) is not made to depend on the formulation of a code under Section 3. In fact, the President's action under Section 9(c) was taken more than a month before a petroleum code was approved. Subdivision (e) of Section 3 authorizes the President, on his own motion or upon complaint, as stated, in case any article is being imported into the United States "in substantial quantities or increasing ratio to domestic production of any competitive article", under such conditions as to endanger the maintenance of a code or agreement under Title I, to cause an immediate investigation by the Tariff Commission. The authority of the President to act, after such investigation, is conditioned upon a finding by him of the existence of the underlying facts, and he may permit entry of the articles concerned upon such conditions and with such limitations as he shall find it necessary to prescribe in order that the entry shall not tend to render the code or agreement ineffective. Section 4 relates to agreements and licenses for the purposes stated. Section 5 refers to the application of the anti-trust laws. Sections 6 and 7 impose limitations upon the application of Title I, bearing upon trade associations and other organizations and upon the relations between employers and employees. Section 8 contains provisions with respect to the application of the Agricultural Adjustment Act of May 12, 1933.

None of these provisions can be deemed to prescribe any limitation of the grant of authority in Section 9 (c).

Fifth. The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted, and will act, for what he believes to be the public good. The point is not one of motives but of constitutional authority, for which the best of motives is not a substitute. While the present controversy relates to a delegation to the President, the basic question has a much wider application. If the Congress can make a grant of legislative authority of the sort attempted by Section 9 (c), we find nothing in the Constitution which restricts the Congress to the selection of the President as grantee. The Congress may vest the power in the officer of its choice or in a board or commission such as it may select or create for the purpose. Nor, with respect to such a delegation, is the question concerned merely with the transportation of oil, or of oil produced in excess of what the State may allow. If legislative power may thus be vested in the President, or other grantee, as to that excess of production, we see no reason to doubt that it may similarly be vested with respect to the transportation of oil without reference to the State's requirements. That reference simply defines the subject of the prohibition which the President is authorized to enact, or not to enact, as he pleases. And if that legislative power may be given to the President or other grantee, it would seem to follow that such power may similarly be conferred with respect to the transportation of other commodities in interstate commerce with or without reference to state action, thus giving to the grantee of the power the determination of what is a wise policy as to that transportation, and authority to permit or prohibit it, as the person, or board or commission, so chosen, may think desirable. In that view, there would appear to be no ground for denying a similar prerogative of delegation with respect to other subjects of legislation.

The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives". Art. I, Sec. 1. And the Congress is empowered "To make all laws which shall be necessary and proper for carrying into execution" its general powers. Art. I, Sec. 8, par. 18. The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

The Court has had frequent occasion to refer to these limitations and to review the course of congressional action. At the very outset, amid the disturbances due to war in Europe, when the national safety was imperiled and our neutrality was disregarded, the Congress passed a series of acts, as a part of which the President was authorized, in stated circumstances, to lay and revoke embargoes, to give permits for the exportation of arms and military stores, to remit and discontinue the restraints and prohibitions imposed by acts suspending commercial intercourse with certain countries, and to permit or interdict the entrance into waters of the United States of armed vessels belonging to foreign nations.[7] These early acts were not the subject of judicial decision and, apart from that, they afford no adequate basis for a conclusion that the Congress assumed that it possessed an unqualified power of delegation. They were inspired by the vexations of American commerce through the hostile enterprises of the belligerent powers,[8] they were directed to the effective execution of policies repeatedly declared by the Congress, and they confided to the President, for the purposes and under the conditions stated, an authority which was cognate to the conduct by him of the foreign relations of the Government.[9]

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[7] Acts of June 4, 1794, 1 Stat. 372; March 3, 1795, 1 Stat. 444; June 13, 1798, 1 Stat. 565, 566; February 9, 1799, 1 Stat. 613, 615; February 27, 1800, 2 Stat. 7, 9, 10; March 3, 1805, 2 Stat. 339, 341, 342; February 28, 1806, 2 Stat. 351, 352; April 22, 1808, 2 Stat. 490.

[8] Marshall's Life of Washington, Vol. 2, pp. 319, *et seq.*

[9] Thus, prior to the Act of June 4, 1794 (1 Stat. 372), the Congress had laid embargoes, for limited periods, upon vessels in ports of the United States bound to foreign ports. Resolutions of March 26, 1794, and April 18, 1794, 1 Stat. 400, 401. Fearing that the national safety might be endangered, the President, by the Act of June 4, 1794, was authorized to lay an embargo, with appropriate regulations, whenever he found "that the public safety shall so require", the authority not to be exercised while the Congress was in session and the embargo to be limited in any case to 15 days after the commencement of the next session. The Act of March 3, 1795 (1 Stat. 444), authorizing the President to permit the exportation of arms, etc. was "in cases connected with the security of the commercial interest of the United States and for public purposes only". By the Act of June 13, 1798 (1 Stat. 565), commercial intercourse was suspended between the United States and France and its dependencies. The Act was to continue only until the end of the next session of Congress and it was provided (Sec. 5) that if, before the next session, the Government of France "shall clearly disavow, and shall be found to refrain from the aggressions, depredations and hostilities" against

The first case relating to an authorization of this description was that of *The Brig Aurora,* 7 Cranch. 382. The cargo of that vessel had been condemned as having been imported from Great Britain in violation of the non-intercourse Act of March 1, 1809. 2 Stat. 528. That Act expired on May 1, 1810,[10] when Congress passed another Act (2 Stat. 605, 606) providing that in case either Great Britain or France, before March 3, 1811, "shall . . . so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, which fact the President of the United States shall declare by proclamation, and if the other nation shall not within three months thereafter so revoke or modify her edicts in like manner", then, with respect to that nation, as stated, the provisions of the Act of 1809, after three months from that proclamation, "shall . . . be revived and have full force and effect". On November 2, 1810, the President issued his proclamation declaring that France had so revoked or modified her edicts, and it was contended that the provisions of the Act of 1809, as to the cargo in question, had thus been revived. The Court said

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the vessels and other property of citizens of the United States, and shall acknowledge the neutrality of the United States, "it shall be lawful for the President", "being well ascertained of the premises", to remit and discontinue the prohibitions and restraints imposed by the Act and to make proclamation accordingly. The Act of February 9, 1799 (1 Stat. 613), further suspended commercial intercourse between the United States and France and its dependencies until March 3, 1800, and gave a similar authority (Sec. 4) to the President to remit and discontinue the restraints and prohibitions of the Act, "if he shall deem it expedient and consistent with the interest of the United States", either with respect to the French Republic or to any place belonging to that Republic, "with which a commercial intercourse may safely be renewed", and to revoke such order if he found that the interest of the United States so required. The suspension of commercial intercourse was renewed by the Act of February 27, 1800 (2 Stat. 7) until March 3, 1801, with a similar provision as to the authority of the President. The Act of March 3, 1805 (2 Stat. 339) related to persons committing treason, felony, etc. within the jurisdiction of the United States and taking refuge in foreign armed vessels, and the authority to the President to permit or prevent the entry of such vessels into the waters of the United States (Sec. 4) was "in order to prevent insults to the authority of the laws, whereby the peace of the United States with foreign nations may be endangered". See also Act of April 22, 1808, 2 Stat. 490. See, also, Proclamations of President Adams, "Works of John Adams", Vol. IX, pp. 176, 177.

[10] See Act of June 28, 1809, 2 Stat. 550.

that it could see no sufficient reason why the legislature should not exercise its discretion in reviving the Act of 1809, "either expressly or conditionally, as their judgment should direct". The provision of that Act declaring "that it should continue in force to a certain time, and no longer", could not restrict the power of the legislature to extend its operation "without limitation upon the occurrence of any subsequent combination of events". This was a decision, said the Court in *Field* v. *Clark,* 143 U. S. 649, 683, "that it was competent for Congress to make the revival of an act depend upon the proclamation of the President, showing the ascertainment by him of the fact that the edicts of certain nations had been so revoked or modified that they did not violate the neutral commerce of the United States".

In *Field* v. *Clark, supra,* the Court applied that ruling to the case of "the suspension of an act upon a contingency to be ascertained by the President, and made known by his proclamation". The Court was dealing with Section 3 of the Act of October 1, 1890, 26 Stat. 567, 612. That section provided that, "with a view to secure reciprocal trade" with countries producing certain articles, "whenever, and so often as the President shall be satisfied" that the Government of any country producing them imposed "duties or other exactions upon the agricultural or other products of the United States" which, in view of the free list established by the Act, the President "may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty," to suspend the free introduction of those articles by proclamation to that effect, and that during that suspension the duties specified by the section should be levied. The validity of the provision was challenged as a delegation to the President of legislative power. The Court reviewed the early acts to which we have referred, as well as later statutes considered to be analogous.[11] While sustaining the provision, the Court emphatically declared that the principle that "Congress cannot delegate legislative power to the President" is "universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution''. The Court found that the act before it was not inconsistent with that principle; that it did not ''in any real sense, invest the President with the power of legislation.'' As ''the suspension was absolutely required when the President ascertained the existence of a particular fact'', it could not be said ''that in ascertaining that fact and in issuing his proclamation, in obedience to the legislative will, he exercised the function of making laws''. ''He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect''. *Id.*, pp. 692, 693. The Court referred with approval to the distinction pointed out by the Supreme Court of Ohio in *Cincinnati, Wilmington, etc. Railroad* v. *Commissioners,* 1 Ohio St. 88, between ''the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law''.

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[11] Acts of March 3, 1815, 3 Stat. 224; March 3, 1817, 3 Stat. 361; January 7, 1824, 4 Stat. 2; May 24, 1828, 4 Stat. 308; May 31, 1830, 4 Stat. 425; March 6, 1866, 14 Stat. 3; March 3, 1883, 22 Stat. 490; June 26, 1884, 23 Stat. 57; October 1, 1890, 26 Stat. 616. R. S. 2493, 2494, 4219, 4228. Proclamations of Presidents; 3 Stat. App. I; 4 Stat. App. III, 814-818; 9 Stat. App. 1001, 1004; 11 Stat. App. 795; 13 Stat. App. 739; 14 Stat. App.

Applying that principle, authorizations given by Congress to selected instrumentalities for the purpose of ascertaining the existence of facts to which legislation is directed, have constantly been sustained. Moreover, the Congress may not only give such authorizations to determine specific facts but may establish primary standards, devolving upon others the duty to carry out the declared legislative policy, that is, as Chief Justice Marshall expressed it, ''to fill up the details'' under the general provisions made by the legislature. *Wayman* v. *Southard,* 10 Wheat. 1, 43. In *Buttfield* v. *Stranahan,* 192 U. S. 470, 496, the Act of March 2, 1897 (29 Stat. 604, 605) was upheld, which authorized the Secretary of the Treasury, upon the recommendation of a board of experts, to ''establish uniform standards of purity, quality, and fit-

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818, 819; 16 Stat. App. 1127; 17 Stat. App. 954, 956, 957; 21 Stat. 800; 23 Stat. 841, 842, 844.

For other analogous statutes, see Acts of December 17, 1813, 3 Stat. 88, 93; June 19, 1886, 24 Stat. 79, 82; March 3, 1887, 24 Stat. 475; August 30, 1890, 26 Stat. 414, 415; February 15, 1893, 27 Stat. 449, 452; March 2, 1895, 28 Stat. 727, 733; September 8, 1916, 39 Stat. 756, 799; June 15, 1917, 40 Stat. 217, 225; August 10, 1917, 40 Stat. 276; October 6, 1917, 40 Stat. 411, 422; March 4, 1919, 40 Stat. 1348, 1350; June 17, 1930, 46 Stat. 590, 704. Resolutions of March 14, 1912, 37 Stat. 630; January 31, 1922, 42 Stat. 361. Proclamations; 24 Stat. 1024, 1025, 1028, 1030; 27 Stat. 995, 1011; 38 Stat. 1960; 39 Stat. 1756; 40 Stat. 1683, 1689, *et seq.*

ness for the consumption of all kinds of teas imported into the United States". The Court construed the statute as expressing "the purpose to exclude the lowest grades of tea, whether demonstrably of inferior purity, or unfit for consumption, or presumably so because of their inferior quality". The Congress, the Court said, thus fixed "a primary standard" and committed to the Secretary of the Treasury "the mere executive duty to effectuate the legislative policy declared in the statute". "Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute". See *Red "C" Oil Co.* v. *North Carolina,* 222 U. S. 380, 394.

Another notable illustration is that of the authority given to the Secretary of War to determine whether bridges and other structures constitute unreasonable obstructions to navigation and to remove such obstructions. Act of March 3, 1899, sec. 18, 30 Stat. 1153, 1154. By that statute the Congress declared "a general rule and imposed upon the Secretary of War the duty of ascertaining what particular cases came within the rule" as thus laid down. *Union Bridge Company* v. *United States,* 204 U. S. 364, 386; *Monongahela Bridge Co.* v. *United States,* 216 U. S. 177, 193; *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 638. Upon this principle rests the authority of the Interstate Commerce Commission, in the execution of the declared policy of the Congress in enforcing reasonable rates, in preventing undue preferences and unjust discriminations, in requiring suitable facilities for transportation in interstate commerce, and in exercising other powers held to have been validly conferred. *St. Louis, I. M. & S. Rwy. Co* v. *Taylor,* 210 U. S. 281, 287; *Intermountain Rate Cases,* 234 U. S. 476, 486; *Avent* v. *United States,* 266 U. S. 127, 130; *N. Y. Central Securities Co.* v. *United States,* 287 U. S. 12, 24, 25. Upon a similar ground the authority given to the President, in appropriate relation to his functions as Commander-in-Chief, by the Trading with the Enemy Act, as amended by the Act of March 28, 1918 (40 Stat. 460), with respect to the disposition of enemy property, was sustained. "The determination", said the Court, "of the terms of sales of enemy properties in the light of facts and conditions from time to time arising in the progress of war was not the making of a law; it was the application of the general rule laid down by the Act''. *United States* v. *Chemical Foundation,* 272 U. S. 1, 12.[12]

The provisions of the Radio Act of 1927 (44 Stat. 1162, 1163), providing for assignments of frequencies or wave lengths to various stations, afford another instance. In granting licenses, the Radio Commission is required to act ''as public convenience, interest, or necessity requires''. In construing this provision, the Court found that the statute itself declared the policy as to ''equality of radio broadcasting service, both of transmission and of reception'', and that it conferred authority to make allocations and assignments in order to secure, according to stated criteria, an equitable adjustment in the distribution of facilities.[13] The standard set up was not so indefinite ''as to confer an unlimited power''. *Radio Commission* v. *Nelson Brothers Co.,* 289 U. S. 266, 279, 285.

So, also, from the beginning of the Government, the Congress has conferred upon executive officers the power to make regulations,—''not for the government of their departments, but for administering the laws which did govern''. *United States* v. *Grimaud,* 220 U. S. 506, 517. Such regulations become, indeed, binding rules of conduct, but they are valid only as subordinate rules and when found to be within the framework of the policy which the legislature has sufficiently defined. In the case of *Grimaud, supra,* a regulation made by the Secretary of Agriculture requiring permits for grazing sheep on a forest reserve of lands belonging to the United States was involved. The Court referred to the various acts for the establishment and management of forest reservations and the authorization of rules which would ''insure the objects of such reservation'', that is, ''to regulate their occupancy and use and to preserve the forests thereon from destruction''. The Court observed that ''it was impracticable for Congress to provide general regulations for these various and varying details of management'', and that, in authorizing the Secretary of Agriculture to meet local conditions, Congress ''was merely conferring administrative functions upon an agent, and not delegating to him legislative power''. *Id.,* pp. 515, 516. The Court quoted with approval the statement of the principle in *Field* v. *Clark, supra,* that the Congress cannot delegate legislative power, and upheld the regulation in question as an administrative rule for the appropriate execution of the policy laid down in the statute. See *Wayman* v. *Southard, supra; Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194, 214, 215; *Selective Draft Law Cases,* 245 U. S. 366, 389; *McKinley* v. *United States,* 249 U. S. 397.

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[12] See, also, Sections 4 (b) and 5 (a) of the Trading with the Enemy Act, 40 Stat. 411, 414, 415.

[13] Act of March 28, 1928, amending Section 9 of the Radio Act of 1927, 45 Stat. 373.

The applicable considerations were reviewed in *Hampton & Company* v. *United States,* 276 U. S. 394, where the Court dealt with the so-called "flexible tariff provision" of the Act of September 21, 1922 (42 Stat. 858, 941, 942), and with the authority which it conferred upon the President. The Court applied the same principle that permitted the Congress to exercise its rate-making power in interstate commerce, and found that a similar provision was justified for the fixing of customs duties; that is, as the Court said, "If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power. If it is thought wise to vary the customs duties according to changing conditions of production at home and abroad, it may authorize the Chief Executive to carry out this purpose, with the advisory assistance of a Tariff Commission appointed under Congressional authority." The Court sustained the provision upon the authority of *Field* v. *Clark, supra,* repeating with approval what was there said,—that "What the President was required to do was merely in execution of the act of Congress". *Id.*, pp. 409-411.

Thus, in every case in which the question has been raised, the Court has recognized that there are limits of delegation which there is no constitutional authority to transcend. We think that Section 9 (c) goes beyond those limits. As to the transportation of oil production in excess of state permission, the Congress has declared no policy, has established no standard, has laid down no rule. There is no requirement, no definition of circumstances and conditions in which the transportation is to be allowed or prohibited.

If Section 9 (c) were held valid, it would be idle to pretend that anything would be left of limitations upon the power of the

Congress to delegate its law-making function. The reasoning of the many decisions we have reviewed would be made vacuous and their distinctions nugatory. Instead of performing its law-making function the Congress could at will and as to such subjects as it chooses transfer that function to the President or other officer or to an administrative body. The question is not of the intrinsic importance of the particular statute before us, but of the constitutional processes of legislation which are an essential part of our system of government.

Sixth. There is another objection to the validity of the prohibition laid down by the Executive Order under Section 9 (c). The Executive Order contains no finding, no statement of the grounds of the President's action in enacting the prohibition. Both Section 9 (c) and the Executive Order are in notable contrast with historic practice (as shown by many statutes and proclamations we have cited in the margin[14]) by which declarations of policy are made by the Congress and delegations are within the framework of that policy and have relation to facts and conditions to be found and stated by the President in the appropriate exercise of the delegated authority. If it could be said that from the four corners of the statute any possible inference could be drawn of particular circumstances or conditions which were to govern the exercise of the authority conferred, the President could not act validly without having regard to those circumstances and conditions. And findings by him as to the existence of the required basis of his action would be necessary to sustain that action, for otherwise the case would still be one of an unfettered discretion as the qualification of authority would be ineffectual. The point is pertinent in relation to the first section of the National Industrial Recovery Act. We have said that the first section is but a general introduction, that it declares no policy and defines no standard with respect to the transportation which is the subject of Section 9 (c). But if from the extremely broad description contained in that section and the widely different matters to which the section refers, it were possible to derive a statement of prerequisites to the President's action under Section 9 (c), it would still be necessary for the President to comply with those conditions and to show that compliance as the ground of his prohibition. To hold that he is free to select as he chooses from the many and various objects generally described in the first section, and then to act without making any finding with respect to any object that he does select, and the circumstances properly related to that object, would be in effect to make the conditions inoperative and to invest him with an uncontrolled legislative power.

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[14] See Acts and Proclamations cited in Note 11, *supra.*

We are not dealing with action which, appropriately belonging to the executive province, is not the subject of judicial review, or with the presumptions attaching to executive action.[15] To repeat, we are concerned with the question of the delegation of legislative power. If the citizen is to be punished for the crime of violating a legislative order of an executive officer, or of a board or commission, due process of law requires that it shall appear that the order is within the authority of the officer, board or commission, and, if that authority depends on determinations of fact, those determinations must be shown. As the Court said in *Wichita Railroad & Light Co.* v. *Public Utilities Commission,* 260 U. S. 48, 59: "In creating such an administrative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to give validity to its action. When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective. It is pressed on us that the lack of an express finding may be supplied by implication and by reference to the averments of the petition invoking the action of the Commission. We can not agree to this". Referring to the ruling in the *Wichita* case, the Court said in *Mahler* v. *Eby,* 264 U. S. 32, 44: "We held that the order in that case made after a hearing and ordering a reduction was void for lack of the express finding in the order. We put this conclusion not only on the language of the statute but also on general principles of constitutional government''. We cannot regard the President as immune from the application of these constitutional principles. When the President is invested with legislative authority as the delegate of Congress in carrying out a declared policy, he necessarily acts under the constitutional restriction applicable to such a delegation.

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[15] See Philadelphia R. R. Co. *v.* Stimpson, 14 Pet. 448, 458; Martin *v.* Mott, 12 Wheat. 19, 30, 32; Dakota Central Telephone Co. *v.* South Dakota, 250 U. S. 163, 182, 184; United States *v.* Chemical Foundation, 272 U. S. 1, 14, 15; Sterling *v.* Constantin, 287 U. S. 378, 399.

We see no escape from the conclusion that the Executive Orders of July 11, 1933, and July 14, 1933, and the Regulations issued by the Secretary of the Interior thereunder, are without constitutional authority.

The decrees of the Circuit Court of Appeals are reversed and the causes are remanded to the District Court with direction to modify its decrees in conformity with this opinion so as to grant permanent injunctions, restraining the defendants from enforcing those orders and regulations.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 135 and 260.—October Term, 1934.

Panama Refining Company, et al., Petitioners, 135 *vs.* A. D. Ryan, et al., Respondents.	On Writs of Certiorari to the Circuit Court of Appeals for the Fifth Circuit.
Amazon Petroleum Corporation, et al., Petitioners, 260 *vs.* Archie D. Ryan, et al., Respondents.	

[January 7, 1935.]

Mr. Justice Cardozo, dissenting.

With all that is said in the opinion of the court as to the Code of Fair Competition adopted by the President August 16, 1933, for the governance of the petroleum industry, I am fully in accord. No question is before us at this time as to the power of Congress to regulate production. No question is here as to its competence to clothe the President with a delegated power whereby a Code of Fair Competition may become invested with the force of law. The petitioners were never in jeopardy by force of such a code or of regulations made thereunder. They were not in jeopardy because there was neither statute nor regulation subjecting them to pains or penalties if they set the code at naught. One must deplore the administrative methods that brought about uncertainty for a time as to the terms of executive orders intended to be law. Even so, the petitioners do not stand in need of an injunction to restrain the enforcement of a non-existent mandate.

I am unable to assent to the conclusion that § 9 (c) of the National Recovery Act, a section delegating to the President a very different power from any that is involved in the regulation of production or in the promulgation of a code, is to be nullified upon the ground that his discretion is too broad or for any other reason. My point of difference with the majority of the court is narrow. I concede that to uphold the delegation there is need to discover in the terms of the act a standard reasonably clear whereby discretion must be governed. I deny that such a standard is lacking in respect of the prohibitions permitted by this section when the act with all its reasonable implications is considered as a whole. What the standard is becomes the pivotal inquiry.

As to the nature of the *act* which the President is authorized to perform there is no need for implication. That at least is definite beyond the possibility of challenge. He may prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted by any state law or valid regulation or order prescribed thereunder. He is not left to roam at will among all the possible subjects of interstate transportation, picking and choosing as he pleases. I am far from asserting now that delegation would be valid if accompanied by all that latitude of choice. In the laying of his interdict he is to confine himself to a particular commodity, and to that commodity when produced or withdrawn from storage in contravention of the policy and statutes of the states. He has choice, though within limits, as to the occasion, but none whatever as to the means. The means have been prescribed by Congress. There has been no grant to the Executive of any roving commission to inquire into evils and then, upon discovering them, do anything he pleases. His act being thus defined, what else must he ascertain in order to regulate his discretion and bring the power into play? The answer is not given if we look to § 9 (c) only, but it comes to us by implication from a view of other sections where the standards are defined. The prevailing opinion concedes that a standard will be as effective if imported into § 9 (c) by reasonable implication as if put there in so many words. If we look to the whole structure of the statute, the test is plainly this, that the President is to forbid the transportation of the oil when he believes, in the light of the conditions of the industry as disclosed from time to time, that the prohibition will tend to effectuate the declared policies of the act,—not merely his own conception of its policies, undirected by any extrinsic guide, but the policies announced by section 1 in the forefront of the statute as an index to the meaning of everything that follows.[1]

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[1] "Section 1. . . . It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare

Oil produced or transported in excess of a statutory quota is known in the industry as "hot oil", and the record is replete with evidence as to the effect of such production and transportation upon the economic situation and upon national recovery. A declared policy of Congress in the adoption of the act is "to eliminate unfair competitive practices." Beyond question an unfair competitive practice exists when "hot oil" is transported in interstate commerce with the result that law-abiding dealers must compete with lawbreakers. Here is one of the standards set up in the act to guide the President's discretion. Another declared policy of Congress is "to conserve natural resources." Beyond question the disregard of statutory quotas is wasting the oil fields in Texas and other states, and putting in jeopardy of exhaustion one of the treasures of the nation. All this is developed in the record and in the arguments of counsel for the government with a wealth of illustration. Here is a second standard. Another declared policy of Congress is to "promote the fullest possible utilization of the present productive capacity of industries," and "except as may be temporarily required" to "avoid undue restriction of production." Beyond question prevailing conditions in the oil industry have brought about the need for temporary restriction in order to promote in the long run the fullest productive capacity of business in all its many branches, for the effect of present practices is to diminish that capacity by demoralizing prices and thus increasing unemployment. The ascertainment of these facts at any time or place was a task too intricate and special to be performed by Congress itself through a general enactment in advance of the event. All that Congress could safely do was to declare the act to

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by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

The Act as a whole is entitled as one "To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes"; and the heading of Title I, which includes sections 1 to 10, is "Industrial Recovery".

be done and the policies to be promoted, leaving to the delegate of its power the ascertainment of the shifting facts that would determine the relation between the doing of the act and the attainment of the stated ends. That is what it did. It said to the President in substance: You are to consider whether the transportation of oil in excess of the statutory quotas is offensive to one or more of the policies enumerated in §1, whether the effect of such conduct is to promote unfair competition or to waste the natural resources or to demoralize prices or to increase unemployment or to reduce the purchasing power of the workers of the nation. If these standards or some of them have been flouted with the result of a substantial obstruction to industrial recovery, you may then by a prohibitory order eradicate the mischief.

I am not unmindful of the argument that the President has the privilege of choice between one standard and another, acting or failing to act according to an estimate of values that is individual and personal. To describe his conduct thus is to ignore the essence of his function. What he does is to inquire into the industrial facts as they exist from time to time. Cf. *Hampton & Co.* v. *United States,* 276 U. S. 394, at p. 409; *Locke's Appeal,* 72 Penn. St., 491, 498, quoted with approval in *Field* v. *Clark,* 143 U. S. 649, at p. 694. These being ascertained, he is not to prefer one standard to another in any subjective attitude of mind, in any personal or wilful way. He is to study the facts objectively, the violation of a standard impelling him to action or inaction according to its observed effect upon industrial recovery,—the ultimate end, as appears by the very heading of the title, to which all the other ends are tributary and mediate. Nor is there any essential conflict among the standards *inter se,* at all events when they are viewed in relation to § 9 (c) and the power there conferred. In its immediacy, the exclusion of oil from the channels of transportation is a restriction of interstate commerce, not a removal of obstructions. This is self-evident, and, of course, was understood by Congress when the discretionary power of exclusion was given to its delegate. But what is restriction in its immediacy may in its ultimate and larger consequences be expansion and development. Congress was aware that for the recovery of national wellbeing there might be need of temporary restriction upon production in one industry or another. It said so in § 1. When it clothed the President with power to impose such a restriction—to prohibit the flow of oil illegally produced—it laid upon him a mandate to inquire and determine whether the conditions in that particular industry were such at any given time as to make restriction helpful to the declared objectives of the act and to the ultimate attainment of industrial recovery. If such a situation does not present an instance of lawful delegation in a typical and classic form (*Field* v. *Clark,* 143 U. S. 649; *United States* v. *Grimaud,* 220 U. S. 506; *Hampton & Co.* v. *United States,* 276 U. S. 394), categories long established will have to be formulated anew.

In what has been written, I have stated, but without developing the argument, that by reasonable implication the power conferred upon the President by § 9 (c) is to be read as if coupled with the words that he shall exercise the power whenever satisfied that by doing so he will effectuate the policy of the statute as theretofore declared. Two canons of interpretation, each familiar to our law, leave no escape from that conclusion. One is that the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view. *Cherokee Intermarriage Cases,* 203 U. S. 76, 89; *McKee* v. *United States,* 164 U. S. 287; *Talbott* v. *Silver Bow County,* 139 U. S. 438, 443, 444. The other is that when a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid, the court prefers the meaning that preserves to the meaning that destroys. *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366, 407; *Knights Templars' Indemnity Co.* v. *Jarman,* 187 U. S. 197, 205. Plainly, § 1, with its declaration of the will of Congress, is the chart that has been furnished to the President to enable him to shape his course among the reefs and shallows of this act. If there could be doubt as to this when § 1 is viewed alone, the doubt would be dispelled by the reiteration of the policy in the sections that come later. In § 2, which relates to administrative agencies, in § 3, which relates to Codes of Fair Competition, in § 4, which relates to agreements and licenses, in § 6, which prescribes limitations upon the application of the statute, and in § 10 which permits the adoption of rules and regulations, authority is conferred upon the President to do one or more acts as the delegate of Congress when he is satisfied that thereby he will aid "in effectuating the policy of this title" or in carrying out its provisions. True § 9, the one relating to petroleum, does not by express words of reference embody the same standard, yet nothing different can have been meant. What, indeed, is the alternative? Either the statute means that the President is to adhere to the declared policy of Congress, or it means that he is to exercise a merely arbitrary will. The one construction invigorates the act; the other saps its life. A choice between them is not hard.

I am persuaded that a reference, express or implied, to the policy of Congress as declared in § 1 is a sufficient definition of a standard to make the statute valid. Discretion is not unconfined and vagrant. It is canalized within banks that keep it from overflowing. *Field* v. *Clark,* 143 U. S. 649; *United States* v. *Grimaud,* 220 U. S. 506, and *Hampton & Co.* v. *United States,* 276 U. S. 394, state the applicable principle. Under these decisions the separation of powers between the Executive and Congress is not a doctrinaire concept to be made use of with pedantic rigor. There must be sensible approximation, there must be elasticity of adjustment, in response to the practical necessities of government, which cannot foresee today the developments of tomorrow in their nearly infinite variety. The Interstate Commerce Commission, probing the economic situation of the railroads of the country, consolidating them into systems, shaping in numberless ways their capacities and duties, and even making or unmaking the prosperity of great communities (*Texas & Pacific R. Co.* v. *United States,* 289 U. S. 627), is a conspicuous illustration. See, e. g., 41 Stat. 479-482, c. 91, §§ 405, 406, 407, 408; 42 Stat. 27, c. 20; 49 U. S. C. §§ 3, 4, 5. Cf. *Intermountain Rate Cases,* 234 U. S. 476; *N. Y. Central Securities Co.* v. *United States,* 287 U. S. 12, 24, 25; Sharfman, The Interstate Commerce Commission, vol. 2, pp. 357, 365. There could surely be no question as to the validity of an act whereby carriers would be prohibited from transporting oil produced in contravention of a statute if in the judgment of the commission the practice was demoralizing the market and bringing disorder and insecurity into the national economy. What may be delegated to a commission may be delegated to the President. "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the discretion of the executive." *Hampton & Co.* v. *United States, supra,* at p. 407. Only recently (1932) the whole subject was discussed with much enlightenment in the Report by the Committee on Ministers' Powers to the Lord Chancellor of Great Britain. See especially, pp. 23, 51. In the complex life of today, the business of government could not go on without the delegation, in greater or less degree, of the power to adapt the rule to the swiftly moving facts.

A striking illustration of this need is found in the very industry affected by this section, the production of petroleum and its transportation between the states. At the passage of the National Recovery Act no one could be certain how many of the states would adopt valid quota laws, or how generally the laws would be observed when adopted, or to what extent illegal practices would affect honest competitors or the stability of prices or the conservation of natural resources or the return of industrial prosperity. Much would depend upon conditions as they shaped themselves thereafter. Violations of the state laws might turn out to be so infrequent that the honest competitor would suffer little, if any, damage. The demand for oil might be so reduced that there would be no serious risk of waste, depleting or imperilling the resources of the nation. Apart from these possibilities the business might become stabilized through voluntary coöperation or the adoption of a code or otherwise. Congress not unnaturally was unwilling to attach to the state laws a sanction so extreme as the cutting off of the privilege of interstate commerce unless the need for such action had unmistakably developed. What was left to the President was to ascertain the conditions prevailing in the industry, and prohibit or fail to prohibit according to the effect of those conditions upon the phases of the national policy relevant thereto.

From a host of precedents available, both legislative and judicial, I cite a few as illustrations. By an act approved June 4, 1794, during the administration of Washington (1 Stat. 372; *Field* v. *Clark,* 143 U. S. 649, 683) Congress authorized the President, when Congress was not in session, and for a prescribed period "whenever, in his opinion, the public safety shall so require, to lay an embargo on all ships and vessels in the ports of the United States, or upon the ships and vessels of the United States, or the ships and vessels of any foreign nation, under such regulations as the circumstances of the case may require, and to continue or revoke the same, whenever he shall think proper." By an act of 1799, February 9 (1 Stat. 613, 615) suspending commercial intercourse with France and its dependencies, "it shall be lawful for the President of the United States, if he shall deem it expedient and consistent with the interest of the United States, by his order to remit, and discontinue, for the time being, the restraints and prohibitions aforesaid, . . . and also to revoke such order, [i. e., reëstablish the restraints] whenever, in his opinion, the interest of the United States shall require.'' By an act of October 1, 1890 (26 Stat. 567, 612), sustained in *Field* v. *Clark, supra,* the President was authorized to suspend by proclamation the free introduction into this country of enumerated articles when satisfied that a country producing them imposes duties or other exactions upon the agricultural or other products of the United States which he may deem to be reciprocally unequal or unreasonbale. By an act of September 21, 1922, (42 Stat. 858, 941, 945), sustained in *Hampton & Co.* v. *United States, supra,* the President was empowered to increase or decrease tariff duties so as to equalize the differences between the costs of production at home and abroad, and empowered, by the same means, to give redress for other acts of discrimination or unfairness ''when he finds that the public interest will be served thereby.'' Delegation was not confined to an inquiry into the necessity or occasion for the change. It included the magnitude of the change, the delegate thus defining the act to the performed. By an act of June 4, 1897 (30 Stat. 11, 35), amended in 1905 (33 Stat. 628), regulating the forest reservations of the nation, the purpose of the reservations was declared to be ''to improve and protect the forest within the reservation,'' and to secure ''favorable conditions of water flows, and to furnish a continuous supply of lumber for the use and necessities of citizens of the United States.'' Without further guide or standard, the Secretary of Agriculture was empowered to ''make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction.'' The validity of these provisions was upheld in *United States* v. *Grimaud, supra,* as against the claim by one who violated the rules that there had been an unlawful delegation. Many other precedents are cited in the margin.[2] They teach one lesson and a clear one.

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[2] 2 Stat. 411, December 19, 1806; 3 Stat. 224, March 3, 1815; 23 Stat. 31, 32, May 29, 1884; 25 Stat. 659, February 9, 1889; 38 Stat. 717, September 26, 1914; 41 Stat. 593, May 10, 1920; Williams *v.* United States, 138 U. S. 514; Buttfield *v.* Stranahan, 192 U. S. 470; Intermountain Rate Cases, 234 U. S. 476; Mahler *v.* Eby, 264 U. S. 32. Cf. Emergency Banking Act of March 9, 1933; 48 Stat. 1; Agricultural Adjustment Act of May 12, 1933; 48 Stat. 51, 53, § 43.

There is no fear that the nation will drift from its ancient moorings as the result of the narrow delegation of power permitted by this section. What can be done under cover of that permission is closely and clearly circumscribed both as to subject matter and occasion. The statute was framed in the shadow of a national disaster. A host of unforeseen contingencies would have to be faced from day to day, and faced with a fulness of understanding unattainable by any one except the man upon the scene. The President was chosen to meet the instant need.

A subsidiary question remains as to the form of the executive order, which is copied in the margin.[3] The question is a subsidiary one, for unless the statute is invalid, another order with fuller findings or recitals may correct the informalities of this one, if informalities there are. But the order to my thinking is valid as it stands. The President was not required either by the Constitution or by any statute to state the reasons that had induced him to exercise the granted power. It is enough that the grant of power had been made and that pursuant to that grant he had signified the will to act. The will to act being declared, the law presumes that the declaration was preceded by due inquiry and that it was rooted in sufficient grounds. Such, for a hundred years and more, has been the doctrine of this court. The act of February 28, 1795 (1 Stat. 424), authorized the President "whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe," to call forth such number of the militia of the states as he shall deem necessary and to issue his orders to the appropriate officers for that purpose. Cf. Constitution, Article I, clause 15. When war threatened in the summer of 1812, President Madison acting under the authority of that statute directed Major General Dearborn to requisition from New York, Massachusetts and Connecticut certain numbers of the states' militia. American State Papers, Military Affairs, vol. 1, pp. 322-5. No finding of "imminent danger of invasion" was made by the President in any express way, nor was such a finding made by the Secretary of War or any other official. The form of the requisitions to Massachusetts and Connecticut appears in the state papers of the government (American State Papers, *supra*); the form of those to New York was almost certainly the same. Replevin was brought by a New York militia man who refused to obey the orders, and whose property had been taken in payment of a fine imposed by a court martial. The defendant, a deputy marshal, defended on the ground that the orders were valid, and the plaintiff demurred because there was no allegation that the President had adjudged that there was imminent danger of an invasion. The case came to this court. *Martin* v. *Mott,* 12 Wheat. 19. In an opinion by Story, J., the court upheld the seizure. "The argument is, [he wrote] that the power confided to the President is a limited power, and can be exercised only in the cases pointed out in the statute, and therefore it is necessary to aver the facts which bring the exercise within the purview of the statute. In short, the same principles are sought to be applied to the delegation and exercise of this power intrusted to the Executive of the nation for great political purposes, as might be applied to the humblest officer in the government, acting upon the most narrow and special authority. It is the opinion of the Court, that this objection cannot be maintained. When the President exercises an authority confided to him by law, the presumption is, that it is exercised in pursuance of law. Every public officer is presumed to act in obedience to his duty, until the contrary is shown; and, *a fortiori,* this presumption ought to be favourably applied to the chief magistrate of the Union. It is not necessary to aver, that the act which he may rightfully do, was so done." A like presumption has been applied in other cases and in a great variety of circumstances. *The Philadelphia & Trenton R. Co.* v. *Stimpson,* 14 Pet. 448, 458; *Rankin* v. *Hoyt,* 4 How. 327, 335; *Carpenter* v. *Rannels,* 19 Wall. 138, 146; *The Confiscation Cases,* 20 Wall. 92, 109; *Knox County* v. *Ninth National Bank,*

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[3] "Executive Order. Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage. By virtue of the authority vested in me by the Act of Congress entitled 'AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes', approved June 16, 1933, (Public No. 67, 73d Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited. Franklin D. Roosevelt. The White House, July 11, 1933."

147 U. S. 91, 97; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14, 15. This does not mean that the individual is helpless in the face of usurpation. A court will not revise the discretion of the Executive, sitting in judgment on his order as if it were the verdict of a jury. *Martin* v. *Mott, supra.* On the other hand, we have said that his order may not stand if it is an act of mere oppression, an arbitrary fiat that overleaps the bounds of judgment. *Sterling* v. *Constantin,* 287 U. S. 378, 399, 400, 401. The complainants and others in their position may show, if they can, that in no conceivable aspect was there anything in the conditions of the oil industry in July, 1933, to establish a connection between the prohibitory order and the declared policies of the Congress. This is merely to say that the standard must be such as to have at least a possible relation to the act to be performed under the delegated power. One can hardly suppose that a prohibitory order would survive a test in court if the Executive were to assert a relation between the transportation of petroleum and the maintenance of the gold standard or the preservation of peace in Europe or the Orient. On the other hand, there can be no challenge of such a mandate unless the possibility of a rational nexus is lacking altogether. Here, in the case at hand, the relation between the order and the standard is manifest upon the face of the transaction from facts so notorious as to be within the range of our judicial notice. There is significance in the fact that it is not challenged even now.

The President, when acting in the exercise of a delegated power, is not a quasi-judicial officer, whose rulings are subject to review upon certiorari or appeal (*The Chicago Junction Case,* 264 U. S. 258, 265; cf. *Givens* v. *Zerbst,* 255 U. S. 11, 20), or an administrative agency supervised in the same way. Officers and bodies such as those may be required by reviewing courts to express their decision in formal and explicit findings to the end that review may be intelligent. *Florida* v. *United States,* 282 U. S. 194, 215; *Beaumont, Sour Lake & Western R. Co.* v. *United States,* 282 U. S. 74, 86; *United States* v. *Baltimore & Ohio R. Co.,* Jan. 7, 1935, — U. S. —. Cf. *Public Service Commission of Wisconsin* v. *Wisconsin Telephone Co.,* 289 U. S. 67. Such is not the position or duty of the President. He is the Chief Executive of the nation, exercising a power committed to him by Congress, and subject, in respect of the formal qualities of his acts, to the restrictions, if any, accompanying the grant, but not to any others. One will not find such restrictions either in the statute itself or in the Constitution back of it. The Constitution of the United States is not a code of civil practice.

The prevailing opinion cites *Wichita Railroad & Light Co.* v. *Public Utilities Commission of Kansas,* 260 U. S. 48, and *Mahler* v. *Eby,* 264 U. S. 32, 44. One dealt with a delegation to a public utilities commission of the power to reduce existing rates if they were found to be unreasonable; the other a delegation to the Secretary of Labor of the power to deport aliens found after notice and a hearing to be undesirable residents. In each it was a specific requirement of the statute that the basic fact conditioning action by the administrative agency be stated in a finding and stated there expressly. If legislative power is delegated subject to a condition, it is a requirement of constitutional government that the condition be fulfilled. In default of such fulfilment, there is in truth no delegation, and hence no official action, but only the vain show of it. The analogy is remote between power so conditioned and that in controversy here.

Discretionary action does not become subject to review because the discretion is legislative rather than executive. If the reasons for the prohibition now in controversy had been stated in the order, the jurisdiction of the courts would have been no greater and no less. Investigation resulting in an order directed against a particular person after notice and a hearing is not to be confused with investigation preliminary and incidental to the formulation of a rule. An embargo under the act of 1794 would have been more than a nullity though there had been a failure to recite that what was done was essential to the public safety or to enumerate the reasons leading to that conclusion. If findings are necessary as a preamble to general regulations, the requirement must be looked for elsewhere than in the Constitution of the nation.

There are other questions as to the validity of § 9 (c) in matters unrelated to the delegation of power to the President, and also questions as to the Regulations adopted in behalf of the President by the Secretary of the Interior. They are not considered in the prevailing opinion. However, they have been well reviewed and disposed of in the opinion of Sibley, J., writing for the court below. It is unnecessary at this time to dwell upon them further.

The decree ^ should be affirmed.
in each case